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ABSTRACT

As the charter-school option has expanded across the country, contracting for educational management services is an increasingly available and attractive choice for charter-school governing boards and founding groups. To make contractual relationships work well, charter-school boards need to strike an effective balance between fulfilling their public obligations to govern the school responsibly and giving contractors the freedom to handle school affairs without micromanagement from the board. Drawing on the experiences of charter schools nationwide, this resource guide aims to help charter-school boards structure stable, productive relationships with school-management organizations. It identifies key issues, highlights options, and presents questions to consider in the following areas: understanding the landscape of educational contracting; clearly defining roles and responsibilities in curriculum and instruction, personnel, budgeting, compliance, student recruitment, fundraising, and public relationships; establishing clear guidelines for the duration, termination, and renewal of the contract; carefully structuring the evaluation of performance; creating a clear understanding regarding the management organization's compensation and the school's financial affairs; making clear the ownership of physical and intellectual property; and planning how to manage an orderly transition to new management. (RT)

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Charting A Clear Course:

A Resource Guide for Building Successful Partnerships between Charter Schools and School Management Organizations

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WHO CAN BENEFIT FROM *CHARTING A CLEAR COURSE*?

This resource guide is intended primarily for **charter school governing boards** interested in contracting for comprehensive school management services and seeking assistance in creating effective relationships with particular service providers. The ideas presented in these pages should be useful to a charter board in both selecting a service provider and negotiating a performance-based contract to govern the partnership. This publication does not aim, however, to help charter school boards or founders decide *whether* to contract with management organizations.

Other groups that may benefit from the information and perspectives in *Charting a Clear Course* include:

- schools that may be contracting for substantial educational services without comprehensive management, such as educational programming and design;
- school management organizations and other educational service providers;
- public educational agencies overseeing such contracts (i.e., charter authorizers) or choosing to contract directly for school management services.

This resource guide is the second edition of *Charting a Clear Course*. Those who have already read the first edition will find several new elements to this version, including:

- boxed "scenarios" that provide examples of challenging issues that arise in school management arrangements;
- an expanded and revised section on Pre-Contracting Considerations (p. 5), with more information about how to "shop" effectively for a contractor and how the Internal Revenue Service scrutinizes management contracts;
- a new section on Contingency Planning for New Management (p. 75), which discusses the transition from one management contractor to another arrangement in the event the initial partnership proves unworkable;
- a checklist (p. 80) of important issues to address in management contracts.

Charting a Clear Course

A Resource Guide for Building Successful Partnerships between Charter Schools and School Management Organizations

A publication of the Charter Friends National Network

Second Edition, April 2001

BACKGROUND AND EXECUTIVE SUMMARY

As the charter school option has expanded across the country, contracting for educational management services is an increasingly available and attractive choice for charter school governing boards and founding groups. At the same time, contracting for management services that may determine the success or failure of a performance-based public school is a weighty responsibility in a new, complex and often confusing arena. To date, charter leaders have tackled this challenge in isolation, lacking the opportunity to learn from the experiences of existing charter school management partnerships across the country. Not surprisingly, many charter boards and leaders have voiced a strong desire and need for this opportunity.

This resource guide is a partial response to that need. It is the product of extensive discussions among charter school founders, charter support organizations, school management organizations and chartering authorities on how best to support the growing role of contracted management in charter schools. In particular, two key meetings in 1998 that brought together national leaders in the charter school movement to explore this question inspired and helped to shape this publication. The seeds for this guide were planted in July 1998, when several state-level charter school resource centers that collaborate through the Charter Friends National Network convened a meeting at the national EdVentures Conference (sponsored by the Association of Educators in Private Practice) to discuss school contracting issues with charter and management company leaders. A follow-up meeting in October 1998, co-convened by Leadership for Quality Education and the Brookings Institution, elicited further ideas and strong support for the development of this guide.

In response to the needs and ideas articulated at these two meetings, the Charter Friends National Network contracted with two consultants, Bryan Hassel and Margaret Lin, to produce this resource guide. Both editions of this publication have benefited from the suggestions, critiques, and insights of dozens of leaders in the charter movement nationwide, including charter school trustees and administrators, executives of school management organizations, and charter authorizers.

Key Issues, Questions and Options

To make contractual relationships work well, charter school boards need to strike an effective balance between (1) fulfilling their public obligations to govern the school responsibly; and (2) giving contractors the freedom to handle school affairs without micro-management from the board.

Drawing on the experiences of charter schools nationwide, this resource guide aims to help charter school boards structure stable, productive relationships with school management organizations. It identifies key issues, highlights options, and presents questions to consider in areas such as:

- **Understanding the landscape of educational contracting.** In addition to finding a philosophical match, boards need to determine the scope and types of services that suit

their schools' needs – from "comprehensive" school management to more specifically tailored services.

- **Clearly defining roles and responsibilities** in areas such as curriculum and instruction, personnel, budgeting, compliance, student recruitment, fundraising and public relations.
- **Establishing clear guidelines for the duration, termination and renewal of the contract**, specifying the conditions under which the parties may terminate or renew the relationship.
- **Carefully structuring the evaluation of performance**, including:
  - clear, specific, measurable annual **goals** for student learning at all grade levels;
  - the **instruments and measures** that will be used to assess student learning;
  - **methods** and timelines for **oversight, evaluation, and intervention.**
- **Creating a clear understanding** regarding the management organization's **compensation and the school's financial affairs**, paying close attention to issues such as:
  - structuring the management organization's compensation;
  - setting and revising the school's annual budget;
  - overseeing the school's financial health;
  - handling surpluses, deficits, and debts to the management organization.
- **Making clear the ownership of physical and intellectual property** and how property will be divided if the contract is terminated for any reason.
- **Planning how to manage an orderly transition to new management** in the event the contract is terminated.

To Obtain Printed or Electronic Versions of this Resource Guide

Individual printed copies of this resource guide are available free of charge by contacting the Charter Friends National Network (CFNN) at 651-644-6115 or jon@charterfriends.org. The resource guide is also available on CFNN's website at http://www.charterfriends.org.

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I. INTRODUCTION

As the charter school option has expanded across the country, contracting for educational management services is an increasingly available and attractive choice for charter schools everywhere. Contracting for some level of school management services can be tremendously helpful for a charter school board faced with the simultaneous, often overwhelming challenges of operating a publicly accountable school, a start-up enterprise, and (in most states with charter legislation) a nonprofit corporation.

When chosen well, school management organizations can be instrumental in helping charter schools fulfill their missions. To be successful, however, management relationships between charter schools and external service providers must be clearly and carefully structured, genuinely performance-based, and built on solid alignment of purpose. Equally important, management contracts do not diminish the core responsibilities and ultimate accountability of charter school governing boards for the performance of their schools.

Management contracts do not diminish the core responsibilities and ultimate accountability of charter school governing boards for the performance of their schools.

Insufficient clarity in some of the relationships created to date between schools and educational service providers has diminished or limited their success. In some cases, hiring a school management provider has led ineffective or poorly functioning charter school boards to neglect their responsibilities for school oversight.

At the other extreme, overly controlling boards may try to micro-manage their educational providers, with equally damaging results. In either case, imprecision or lack of clarity regarding critical issues such as the parties' roles, responsibilities, financial arrangements, and performance obligations and expectations can jeopardize the success – or the very survival – of newly opening charter schools.

The good news is that such problems can largely be avoided by good information, thoughtfulness and foresight in selecting a management contractor as well as negotiating the management agreement. It is critical to **strike an effective balance** – agreeing upon, clarifying and articulating at the outset the responsibilities, commitments and consequences for unsatisfactory performance by either party in the relationship.

This balance will ensure that both: (1) charter school boards fulfill their public obligations for overseeing their performance-based contracts; and (2) contractors receive the needed freedom to operate and implement their programs successfully, without undue interference or "micro-management" from school governing boards. Indeed, the following core principle of successful performance-based agreements should help guide the creation of partnerships between charter schools and management organizations: **In order to hold contractors accountable for performance, those contractors must receive proportionate *autonomy* and *authority* to execute their responsibilities as promised.**

This publication aims to be a resource tool to help charter schools achieve a stable balance, structuring productive relationships with a wide range of school management organizations and other educational service providers. Ideally, it will reduce confusion, disputes, or misunderstandings that may threaten school success or derail these otherwise promising partnerships. Ultimately, stronger relationships and clearer contractual agreements will benefit both charter schools and their chosen contractors.

This resource guide recognizes that school management organizations operate charter schools in a variety of contracting contexts – most commonly under contract with a school's nonprofit corporate board, but sometimes under direct contract with a school district or other public chartering agency. All of these arrangements, however, presume and require the establishment of an arm's-length, performance-based relationship with the school management contractor.

All of these arrangements presume and require the establishment of an arm's-length, performance-based relationship with the school management contractor.

Charting a Clear Course raises common issues that have arisen across the country in contracting arrangements between charter schools and school management providers, noting important considerations and options for parties negotiating such partnerships. It is grounded in lessons learned from the contracting experiences of charter schools around the country and is informed by the critical perspectives of charter school boards, school management organizations, charter authorizers, technical assistance providers, attorneys, researchers, and consulting firms that have contributed to this publication.

This guide also draws heavily from a detailed review of 25 school management contracts involving nine private firms and three nonprofit school management organizations, from charter schools operating in eight charter jurisdictions.[1] In addition, it incorporates findings and lessons from extensive interviews with school management organization executives, charter authorizers in numerous states, and leaders and board members of 13 charter schools operating in seven states under contract with ten different management organizations.[2] This research was not designed to be empirical but simply to provide a broad base of experience from which to draw useful lessons.

After an introductory chapter on pre-contracting considerations, this resource guide will turn to specific contracting provisions, offering examples from actual school management contracts to help charter boards evaluate the relative advantages and disadvantages of various options concerning:

- roles and responsibilities of charter boards and school management organizations;
- contract duration, renewal and termination;

[1] Arizona, California, the District of Columbia, Illinois, Massachusetts, Minnesota, Pennsylvania, and Texas.
[2] Many of these interviews were conducted by selected contributors, not the authors of this resource guide.

- performance oversight and evaluation (with emphasis on educational performance);
- compensation and finances;
- intellectual property and physical assets.

Each chapter will include fictional scenarios to illustrate potential challenges or conflicts that charter school boards and management contractors realistically may face in these areas.[3] The guide will end with a discussion of ways that charter boards can plan for the possibility – however remote or unpleasant to contemplate – of a contract termination.

This publication is not all-inclusive, nor does it intend to be prescriptive in its advice. Rather, it aims simply to offer information about various contracting options and considerations to help charter school boards become better-informed purchasers of school management services, in turn creating stronger, long-lasting partnerships between charter schools and management providers.

Many of the issues facing charter school boards in this position are standard in service contracting, and an attorney experienced in contract drafting and negotiations can serve boards well. At the same time, the experiences of charter schools across the country that have contracted for school management services to date reveal a host of complexities unique to this type of partnership. *Charting a Clear Course* aims to be a resource in helping charter school boards understand and thoughtfully navigate these challenges.

Charter boards should be prepared for the possibility – however remote or unpleasant to contemplate – of a contract termination.

Before delving into these issues, several points of clarification are in order:

- **Focus**. This resource guide is designed principally for charter school boards seeking to contract for comprehensive educational management services. At the same time, it will also be useful to schools contracting for substantial educational services without comprehensive management – for example, educational programming and design. For simplicity, however, this guide will frequently refer to service providers as school "management organizations," "management companies," or "management firms." These terms are used loosely, and readers should keep in mind that the ideas and lessons discussed in these pages are frequently applicable to other educational service contracting contexts. (An overview of the service models available to charter schools appears in the "The Landscape of Contracting for Educational Services," below.)
- **Terminology**. The educational management industry includes both for-profit and nonprofit organizations, and many charter schools contract for services from nonprofit providers. Service contracts with either for-profit or nonprofit organizations present many common issues; thus, this publication can be helpful to schools contemplating a partnership with either type of entity. The guide uses the terms "organizations,"

[3] While aiming to be realistic, these scenarios are wholly fictional and are not intended to depict the experiences of any actual charter schools or service providers.

"companies," and "firms" interchangeably. Readers should recognize that this terminology is broad, and that the issues or lessons discussed are often equally applicable to service contracting with both nonprofit and for-profit entities.

- **The board's need for legal advice.** This guide does not purport or attempt to provide legal advice in negotiating a contract with a school management organization. On the contrary, this guide strongly recommends that that charter school boards planning to contract for educational management services obtain legal counsel experienced in nonprofit governance and management, school law, and general contracting. Such counsel should serve and represent the charter board, and should thus be independent from counsel representing the contractor. This publication discusses contracting issues only in a general sense, drawing from lessons learned from various charter school contracting arrangements around the country. Specialized legal help is necessary to draft a solid, thoughtful contract tailored to different state laws and the needs of individual schools.

- **Learning from peers**. In addition, charter school boards contemplating contractual relationships with school management companies would likely benefit from studying a range of contracts that have been executed by other charter schools and management companies. These are public documents and can be obtained from charter schools that are operated by management organizations, as well as from charter-authorizing agencies, which usually keep such contracts on file. In addition, charter board members can benefit from talking directly to their peers in similar relationships. Charter school resource centers and other local or regional charter support organizations are good places to start in identifying charter schools that have had both successful and unsuccessful relationships with outside management organizations.

Charter school boards planning to contract for educational management services should obtain legal counsel experienced in nonprofit governance and management, school law, and general contracting.

- **A word about contractual provisions quoted.** This resource guide occasionally quotes provisions from existing school management contracts that may offer helpful perspectives to other charter school boards. At the same time, their inclusion in this publication does not imply that they are necessarily useful for all schools, exemplary, or "airtight." For this reason, the quotations should be considered "sample" rather than "model provisions" from actual contracts.

II. PRE-CONTRACTING CONSIDERATIONS

In establishing a partnership with a management provider, charter school boards must keep foremost in mind their **non-delegable responsibility** to establish and protect the school's mission. Boards may not delegate away their responsibility for thoughtful, active oversight in a service-contracting relationship.

It is equally vital that boards allow sufficient **time** for research, planning and forging a strong partnership that will survive inevitable challenges. A long-term partnership with an educational service provider is akin to a marriage in many ways – detailed mutual understandings are a necessary foundation to avoid the high costs and frequently damaging effects of "divorce." Accordingly, one of the greatest mistakes a charter board can make is to "rush to the altar," spurred by neediness or a whirlwind "romance" with a potential partner.

***Scenario**: After the Whirlwind Courtship . . .*

The founders of Sweetwater Charter Academy are teachers and parents committed to creating a school with a strong environmental focus. The teachers in the group plan to teach at the school and implement that vision. However, they lack financial resources and management experience, and only six weeks remain to file a charter application for a school to open next fall. Overwhelmed by this demanding timeframe and the difficulty of the charter application requirements in their school district, Sweetwater's founding board decides to purchase a customized package of services from Open Skies Learning Systems to supplement the founders' capacities. The two parties broadly agree that Open Skies will provide two-thirds of the core educational program, while the remaining third will be focused on environmental studies that Sweetwater's founding teachers will develop. They agree to hash out the details of the two-pronged educational program after filing the charter application.

Sweetwater's board decides to delegate most of the proposal preparation to Open Skies, trusting the company's successful track record in preparing charter applications in other states. The proposal is submitted just in time without much review by the board.

In the weeks after filing the application, the board and Open Skies work on refining their agreement. At this point, clear conflicts surface between the environmental studies championed by Sweetwater's founding teachers and the "core educational program" proposed by Open Skies. For example, the environmental program would take students off-site for an average of two days a week, which Open Skies insists would deprive students of adequate instructional time in Open Skies' curriculum. The allocation of time is one of several educational disagreements that the school founders and Open Skies cannot resolve.

About a month before the charter authorizer is due to announce its decision on the application, several of Sweetwater's board members tire of the endless wrangling with Open Skies and recommend dropping the partnership. Doing so, however, would require that Sweetwater withdraw its charter proposal and wait another year to re-submit without Open Skies.

In exploring possible arrangements, a key principle to keep in mind, as mentioned earlier, is the proportionate relationship between the **autonomy** and **authority** granted to a contractor and the level of performance **accountability** that can fairly be expected of the contractor. From a

management organization's perspective, the greater the degree of accountability desired for its performance, the more freedom and control it will need over the school's educational program, staff, budgeting, and other operations.

This chapter explores additional overarching matters that charter school boards should consider prior to contracting for educational services, including determining the type of services the board seeks and defining the charter board's basic position and responsibilities in the contracting arrangement.

***Scenario:** Aligning Visions and Agreeing on the "Education Program"*

Maple Hill Charter School and its comprehensive school management organization, Open Skies Learning Systems, have agreed that Open Skies will take charge of all aspects of Maple Hill's education program. Maple Hill's charter states that it will provide tutoring, enrichment activities, and social services in structured before- and after-school programs, and Maple Hill's board considers these central to the school's mission. In August before the school is to open, however, Open Skies announces that the before- and after-school programs will be cut because a major grant the school was counting on is unlikely to come through. Open Skies believes these programs are "extras" and can wait until the school secures additional funding for them. However, Maple Hill's board argues that they are part of the core program, and that Open Skies must implement them by reallocating funds if necessary.

A. The Landscape of Contracting for Educational Services

The fast-growing educational services industry offers a broad range of options to charter schools. While this resource guide focuses on issues for schools choosing to contract for comprehensive management services, boards should be familiar with the range of choices available to them in order to find providers best matched to their particular school needs.

The types and levels of services offered by educational service providers today can be loosely grouped under three general models: (1) comprehensive (and sometimes customized) school management; (2) comprehensive school designs *without* management services; and (3) selective or "made-to-order" educational services. Following is a brief description of each of these approaches. Readers should keep in mind that these categories are not rigid; for example, some comprehensive school management firms also offer customized or selective services, and are willing to negotiate varying service levels and packages with prospective partner schools.

1. Comprehensive or Customized School Management

Companies offering comprehensive school management services provide "soup-to-nuts" educational programming and management for schools, including (but not limited to):

- a firm, often research-based educational philosophy and design—including a detailed curriculum and pedagogical materials, grade-by-grade learning standards, and

assessment methods and tools—all of which are standardized across all schools operated by a particular organization;

- staff hiring and management—including recruiting, training, professional development, evaluation, and (if necessary) termination;
- student recruitment;
- school start-up capital and facilities financing assistance;
- business management and comprehensive administrative services;
- school operations management;
- facilities planning and management;
- special education services;
- reporting and compliance services.

Depending on the particular company and charter jurisdiction, staff in charter schools operated by comprehensive management firms may be employees of either the firm or the charter school itself. Even where the school is the legal employer, however, the education provider directs and manages the staff day-to-day. The firm provides a detailed educational program and design, and school staff must "buy into" and agree to implement the company's educational model and pedagogical methods. The company provides training, professional development, and support; in turn, faculty members have relatively little freedom or responsibility to design or help develop the educational program.

Some management organizations are willing to "customize" their offerings – i.e., tailor their typical service package to accommodate the needs or priorities of client schools.

Some management organizations are willing to "customize" their offerings – i.e., tailor their typical service package to accommodate the needs or priorities of client schools. The customized approach offers more opportunity to the school founders, director, faculty, or the broader school community to modify or help develop the educational program, in combination with the management firm's own offerings. Thus, a charter school board or founding organization that wishes to be involved in designing the school's educational program may be able to modify or augment a contractor's educational package with their own design elements (whether they are "home-grown" or obtained from another resource).

2. Comprehensive School Designs without *Management Services*

A growing number of organizations, most (but not all) of them nonprofits, take a different approach. Like the model described above, "school design organizations" offer a comprehensive educational philosophy and design—including a detailed curriculum and pedagogical materials, grade-by-grade learning standards, assessment methods and tools, professional development and staff support. Unlike full-scale management organizations, however, school design organizations typically refrain from activities such as hiring and

supervising staff, managing facilities, performing accounting and other back-office operations, or arranging ancillary services such as school lunches and transportation. Instead, school design organizations usually focus all of their energy on helping schools implement a structured educational program (although some are beginning to work with affiliated providers to offer a broader menu of services).

Like management companies, school design organizations differ in the degree to which they insist on standardizing their approach across all the schools they serve – some are more tightly structured, others more willing to customize. Since the organizations do not take on management responsibilities, school staff are employed by the charter school, not the design organization.

3. Selective Educational Services: "Made-to-Order"

Still other educational management companies do not offer a "whole-school" educational model, but instead a broad menu of discrete services from which client schools can select those that meet their unique needs. Such services may include, for example: curriculum design, financial management, office management and "back-office" operations, special education services, reporting and compliance services, and other types of consulting.

With a "made-to-order" type of firm, the charter school contracts for selective services to meet the school's particular needs, and the firm typically reports to both the principal (or director) and the school's governing board. Under such an arrangement, school staff members are usually employed by the charter school, not the contractor.

B. The Value of "Shopping Around"

There is no reason for charter schools to contract for more services than they actually want—or conversely, to go without any type of assistance that they need.

The array of business models outlined above demonstrates that charter school boards have many options among types and levels of services when seeking an educational service provider. With so many options available to them, charter schools can "shop around" for a service provider that will meet their needs and exact specifications and will be a high-quality long-term partner. There is no reason for charter schools to contract for more services than they actually want—or conversely, to go without any type of assistance that they need.

Partnerships with educational service providers will be thoughtfully conceived and stronger in the long run if charter boards, at the outset, specify and negotiate for the exact types and levels of services they seek, understanding that providers can be flexible and willing to negotiate on many matters. With this in mind, the following steps are useful for boards embarking on a search for contracted assistance in designing and managing a school:

- **Firmly establish the school's mission before going shopping for service providers.** Boards that take mission-setting too lightly will be vulnerable to having their school missions partially defined or altered by others. On the contrary, boards should use their research or "shopping" experience to refine their expectations and explore options to find the best fit. Those that don't clearly understand what they're looking for *before* venturing into the education marketplace risk making "impulse" choices they will regret.

A planning year may be a wise investment of time for many school founders.

- **Carefully consider the potential benefits, challenges, and tradeoffs involved in hiring an educational service provider**. Potential *benefits* may include, for example: gaining access to educational, human and financial resources; avoiding the need to "reinvent the wheel"; and boosting the school's credibility by partnering with an established, capacity-building organization. Potential *challenges* or *tradeoffs* include: losing some flexibility and day-to-day control; financial costs; and blurred or weak accountability if the relationship is poorly structured.

- **Consider whether the board has the desire and capacity to create an all-new, successful public school on its own.** If not, then **assess what services the school needs to contract for, and determine what the board is willing to give up** (part of its budget, control, etc.) to get them, in both the short and long term. It may be helpful to think of this as conducting a systematic *school needs assessment*.

- **Start the "shopping" and selection process early; take a planning year if necessary**. Charter planners interested in contracting for service must allow sufficient time to: (1) assess their own school's needs; (2) explore the breadth of options available to meet those needs; (3) get to know various service providers well enough for an informed comparison; (4) forge a strong partnership with the contractor ultimately selected; and (5) negotiate a mutually acceptable performance-based relationship. This process requires a great deal of time and reflection.

  Too often, school founders allow their sense of urgency, desire not to lose momentum, or pressure to meet a fast-approaching charter application deadline to eclipse the process of researching and examining the range of service-contracting options available to them. This is a grave error. Making decisions in a last-minute rush or under duress typically leads to unwanted concessions or compromises, miscommunication, and misunderstandings, which can doom the school to turmoil. Accordingly, a planning year may be a wise investment of time for many school founders – a school will lose far more than a year of productivity if it rushes into an ill-considered or poorly constructed partnership.

- **Write a well-targeted, precise *Request for Proposal* (RFP) and circulate it widely among diverse providers.** Writing an RFP can be a tremendously valuable exercise in itself for boards, forcing members to agree on and articulate what they seek from contractors and enabling them to advertise their needs clearly. Likewise, RFPs provide helpful guidance for potential contractors, giving them a clearer understanding of a school's needs and encouraging proposals better tailored to those needs.

- **Conduct due diligence on potential providers to find the best fit.** Learn as much as possible about the experiences and performance of schools served by these providers, particularly schools facing challenges comparable to those expected for the school being planned. Visit schools to see particular providers' offerings in action; speak with members of the school communities; and get opinions from charter authorizers, charter support organizations, and other impartial parties who know the track records of various providers. Boards or school founders can draw upon an increasing variety of resources – some included on page 13 – to learn more about particular providers and become knowledgeable shoppers of educational services.

For schools seeking information about the various service providers operating in their geographic areas, good sources of information and referrals are the **charter school resource center** and/or **charter school association** that may be operating in their state or city. These support organizations provide various types of technical assistance to charter schools, sometimes help to broker partnerships between charter schools and service providers, and can probably refer schools to contractors that have shown interest in working in a particular city or state. An extensive directory of charter school resource centers and charter school associations across the country is available on the Charter Friends National Network's website at http://www.charterfriends.org/contacts.html. In addition, local **chartering authorities** can refer schools to service providers interested in working in their areas, and perhaps share helpful insights on their track records.

Learn as much as possible about the experiences and performance of schools served by these providers, particularly schools facing challenges comparable to those expected for the school being planned.

Below are several issues to consider when shopping around for services. These are some of the dimensions along which contractors differ in important ways:

- **Philosophy.** How well does the contractor's approach match your needs? School management and design organizations offer a wide range of educational models, from "back to basics" curricula to experiential, project-based approaches. Boards can narrow the field considerably by focusing on organizations that match the board's vision regarding how teaching and learning will take place in the school. To do that, of course, boards need a clear sense of their own mission and orientation *before going shopping*.
- **Adaptability.** As described above, educational service providers differ in how willing they are to adapt their programs to a board's specifications. Some boards won't be interested in adaptation; they may want a contractor's total, unmodified package. But others may want to tailor a particular service provider's program to meet local standards, or to include additional content areas important to the board or school community. This resource guide returns to this issue in the chapter on "Roles and Responsibilities."

- **Scope of services offered.** The three business models outlined above differ most in the scope of services they provide. So boards need to determine the range of services they need before shopping. Some boards have the managerial and administrative support they need to run the school but lack an educational program; for these boards, school design organizations may be the best approach. Others may find themselves in the opposite position — having a strong educational program but needing management assistance; for these, "made-to-order" firms may be best. Still others may want a package that includes both management and educational programming; for these schools, the comprehensive or customized management companies may make the most sense.

- **Finances.** Providers also differ in the fees they charge for their services. Different fee structures are discussed in the "Compensation and Finances" chapter of this resource guide — the point here is simply that boards should closely examine how contractors propose to be paid. Boards should also clearly understand the investments a potential contractor can provide, and on what terms. A contractor that can make up-front investments in facilities or technology may be attractive, if the terms of such investments are favorable and the board determines that the tradeoffs or "costs" of the investments are worthwhile. The "Compensation and Finances" chapter offers some advice about ensuring that investments are well-structured.

- **Scale of organization.** In addition to the range of service options outlined above, charter schools seeking school management services can choose to contract with national, regional, or local providers. Some school management organizations operate at the national level and are rapidly expanding across the country (those offering comprehensive or customized school management frequently offer their services nationwide). Others concentrate only on particular states or regions. Larger organizations may offer greater capacity to provide financial assistance and other services, wide-ranging experience and expertise, economies of scale in purchases and administrative costs, and extensive support networks. In contrast, smaller organizations working with only a few schools may be able to provide more attention to individual client schools, but may not be able to offer all the resources of their larger peers.

- **Service quality.** An important issue for charter school boards to examine when exploring potential contractors is the degree of accessibility, communication, and support the organization will offer the school day-to-day. This appears to be a more common issue for schools contracting with organizations that are aggressively expanding, which may result in focusing their human resources and attention on seeking new partnerships instead of supporting schools already under contract. Because of this possible tension, charter schools choosing fast-growing management providers may find it useful to examine their strategies to ensure adequate assistance for already-contracted schools. In such cases, ask how the organization allocates its resources to sustaining and strengthening existing partner schools versus seeking new contracts.

An important issue for charter school boards to examine is the degree of accessibility, communication, and support the organization will offer the school on a day-to-day basis.

Whatever kind of service provider a board chooses, it's important to get to know, early on, the staff who will actually be working with the school day-to-day – not just the business-development or marketing representatives, who usually have a lesser presence once the partnership is sealed. Likewise, it's important for school planners to know who on the contractor's staff will be responsible for working with the school at each stage or on each critical feature of its development – e.g., partnership development, contract negotiation, school start-up, facility acquisition and renovation, accountability planning, professional development and support, and the like. More than plans described only on paper, these day-to-day relationships will directly determine the quality of services provided.

Communications, accessibility, and quality of support are issues that charter boards should probe with all potential service providers, regardless of their geographic base or number of client schools. When either formal or informal commitments are made regarding these capacities, charter boards should monitor such understandings early in the relationship. If problems appear, promptly asserting the school's needs – while documenting and communicating areas for improvement – will help set the partnership back on the expected track.

The Landscape of Educational Contracting: Helpful Resources

Web Links to Learn More About Educational Service Providers

Center for Education Reform's List of Education Management Organizations

Features information and links to 16 major companies providing education management.
http://www.edreform.com/education_reform_resources/business_industry.htm

National Clearinghouse for Comprehensive School Reform Links to School Reform Models

Includes links to 33 providers of comprehensive school reform models.
http://www.goodschools.gwu.edu/CSRM/modlist.htm

Northwest Regional Laboratory's *Catalog of School Reform Models*

Provides descriptions of 64 models.
http://www.nwrel.org/scpd/natspec/catalog/index.html

American Institutes of Research's *Educator's Guide to Schoolwide Reform*

Describes and summarizes research on effectiveness of 24 models.
http://www.aasa.org/Reform/index.htm

Publications to Help Schools Choose and Work Effectively with Providers

North Central Regional Educational Laboratory's *Making Good Choices*

http://www.ncrel.org/csri/tools/makegood.pdf or (800) 356-2735

Charter Friends National Network's *If the Shoe Fits: A Guide for Charter Schools Thinking about Adopting a Comprehensive School Design*

http://www.charterfriends.org/shoefits.html or (651) 644-6115

Guidelines for Ensuring the Quality of National Design-Based Assistance Providers, Developed by a national blue-ribbon panel of education and business leaders at the request of New American Schools.
http://www.newamericanschools.org or (703) 908-9500

C. Clarifying the Board's Position and Overall Responsibilities

As charter grantees or "holders," charter school boards are publicly entrusted and charged with the obligation to deliver specific educational results. A board may choose to contract for its school's day-to-day management and operations, but the board remains accountable to the

public for the school's performance under the charter. It may delegate a host of tasks and functions, but it cannot delegate responsibility and ultimate accountability for the school's success or failure.

Thus, while the choice to contract for services may relieve a charter school board of many burdens, it also creates a new, weighty responsibility to oversee the contractor's performance in achieving the school's specified goals. Particularly where a school chooses to contract for comprehensive school management, the board's selection of a service provider and the terms of the partnership created will determine whether the school succeeds, fails, or is simply average or mediocre.

Following are several important considerations for charter school boards to bear in mind when embarking on a partnership with a school management organization:

1. Structuring the relationship

Just as every charter school board is ultimately responsible for its school's performance, it is similarly responsible for the structure and terms of its relationship with a management provider. When seeking management assistance, the board should have a clear idea of the types and levels of services needed by the school. Some boards may be ready and able to propose the terms of the service agreement to prospective contractors; others may prefer to solicit and review proposals from a variety of potential providers first.

A thoughtfully negotiated contract will balance the parties' interests and align their expectations, creating a foundation for a strong and productive partnership.

In exploring partnerships with charter schools, it is common for management organizations to propose a pre-prepared, standard contract that they use with all their partner schools (subject to modifications that may be required by different charter laws or negotiated by various schools). Whether the contract is initially drafted by the charter board or the management contractor, the key principle is that the construction of the partnership should be carefully negotiated, with both parties' expectations and requirements clearly articulated and mutually understood. A thoughtfully negotiated contract will balance the parties' interests and align their expectations, creating a foundation for a strong and productive partnership.

2. Responsibility for holding the contractor accountable

The board must be prepared to hold its chosen management company accountable for meeting all obligations specified in the contract. Conflicts of interest or other barriers to holding contractors fully accountable for their performance are an abdication of the board's public responsibilities and fiduciary duties, and may thus jeopardize the school's corporate status under state law.

Likewise, with heightened federal scrutiny of the composition and capacities of charter school governing boards, board deficiencies can jeopardize a school's ability to obtain or maintain

federal tax-exempt status, thus threatening the school's eligibility for federal funds and tax-deductible contributions. (This issue is discussed further in the sections on "Federal Tax Exemption and Contracting for Management Services" and "Independence and Integrity of Charter School Boards" below, as well as in the "Compensation and Finances" chapter.)

3. Possibility of staffing the board

To execute their school oversight and contract management functions well, some boards may find it helpful or necessary to hire professional staff. Such an investment need not be costly – one professional staff person, perhaps part-time, could be sufficient. Some charter school boards currently operate with this type of assistance, funded by a small percentage of the school's per capita revenues or a modest budget line item.

Conflicts of interest impede accountability by preventing impartial evaluation of the contractor's performance.

Not all boards will need this – certainly some boards can function effectively without staff – but in some cases, volunteer oversight may not be able to match a dedicated employee charged with protecting core goals of the board and school community. For boards that may not have the time or capacity to discharge their obligations optimally, lean and expert staffing can be a wise investment. At the same time, boards that choose to hire staff will need to avoid the destructive effect of "micromanaging" the educational contractor. For further discussion, see pages 24 and 43.

4. Independence and integrity of charter school boards

To ensure the independence and public integrity of charter school governing boards, it is essential that such boards scrupulously maintain complete independence from companies that seek or do business with the school. Conflicts of interest impede accountability by preventing impartial evaluation of the contractor's performance, and threaten the school board's integrity as a guardian of the public trust. For this reason, charter school boards should avoid having members who have financial or familial connections with any current or potential vendor or contractor (or subsidiary or agent of such). Likewise, potential or contracted vendors should not exercise influence in the appointment of charter school board members.

Schools seeking federal tax-exempt status have a heightened need to demonstrate the existence of an independent board of directors positioned to negotiate and oversee an arm's-length, performance-based relationship with a management contractor (discussed under "Federal Tax Exemption and Contracting for Management Services"). For any school governing board, a formal policy on board ethics and against conflicts of interest is useful to adopt.

5. Recognition of the authority of the school's charter contract

Many school management agreements do not explicitly obligate the management company to honor and comply with the terms of the overarching charter contract between the charter school and its public authorizer. While such a relationship might seem obvious or implicit, it may be

helpful to include in the management contract a statement placing the management agreement in context, explicitly recognizing the authority of the charter contract that permits the school's existence.

This may be done most simply by incorporating the charter contract and any other relevant agreements (for example, a separate academic accountability agreement, if one exists) by reference – and stating that where conflicts between the two contracts may exist, the terms of the charter agreement (or other overarching agreement) will prevail. This will make clear to all parties that the management contract is subject to – and thus, in no way amends or abrogates – the school's charter contract and other pertinent agreements.

6. Community vs. corporate identity

One question that charter school boards will face is whether the school's public image will primarily reflect a community-based or corporate identity. The school's identity will, of course, be reflected first and foremost by its name. In negotiating school management partnerships, some firms prefer to feature their company name prominently in the school's name, while others are more willing to provide services without high visibility.

Many charter schools that are operated by management companies have hyphenated or hybrid names featuring both the school's community roots and its corporate operator – e.g., the "Southtown-Firm X Charter School." Other schools do not reflect their corporate management in their names at all – e.g., the "Southtown Charter Academy." Most companies are willing to negotiate with charter school boards on naming the school.

The issue of identity and public image arises when determining how the charter school board and its management firm will share or divide responsibilities.

Charter boards will need to weigh several considerations in deciding on the school name. For example, some schools may benefit from "name-branding," to the extent that the name of their management organization connotes to the public a certain cachet or standard of quality (which the company has invested significant resources to attain). At the same time, in some communities, high-profile association with a non-local private corporation may create political problems for a school; and charter laws in a minority of states prohibit schools from bearing the names of private corporations. Additionally, in evaluating charter school applications for federal tax exemption, the Internal Revenue Service views contractual "name-branding" requirements as an indicator that a school is operating for the private benefit of the named company. While the IRS would consider other facts and circumstances applying to the school, a "name-branding" requirement would weigh against approval of tax-exempt status for the school. (This issue is discussed further in the section on "Federal Tax Exemption and Contracting for Management Services.")

In addition to naming the school, the issue of identity and public image arises when determining how the charter school board and its management firm will share or divide responsibilities such as community outreach, student recruitment, fundraising, and public relations. When deciding these and other issues, charter boards should weigh the potential

advantages and disadvantages of linking their school identity closely with a particular management organization (and its reputation or implied quality standard), versus establishing an independent identity that highlights the school's community roots.

7. The "right" time to hire a management contractor

Some charter-founding boards seeking management services question when the "right" time is to retain such services by contract – before or after applying for a charter? If the relevant charter law permits, it makes sense for boards to contract for such services prior to applying for a charter. Logic dictates that services essential to the proposed school's program or operations should be spelled out in the initial charter application. Moreover, structured or detailed charter application processes usually require clear delineation of the role and services that a management provider will perform for a proposed charter school.

Services essential to the proposed school's program or operations should be spelled out in the initial charter application.

In many cases, charter school founding boards contemplating a partnership with a management organization may want the latter to prepare the charter application itself. Companies understandably may be reluctant to invest their labor and resources in this work without a management agreement in place to guarantee business from the proposal (contingent on charter approval).

In some states, however, it may be impossible or legally prohibited to execute a management contract at the charter application stage (e.g., because no legal entity exists to sign the contract until a charter is granted, or because procurement laws require open bidding after a charter is awarded). As a result, in exchange for investing their resources in preparing charter proposals without a guaranteed contract, some management organizations might charge a fee for proposal development. This will protect their investment if the charter board ultimately decides to hire a different contractor, or perhaps no contractor at all.

An additional reference addressing many of these and other topics is the set of ***Educational Service Provider Policies*** produced by Central Michigan University's (CMU) Charter Schools Office, which oversees scores of schools in Michigan that operate under contracted management with third-party providers. These policies lay out basic requirements for third-party management agreements entered into by schools under CMU's oversight. The policies focus on ensuring that school governing boards are prepared for their fiduciary duties and retain ultimate control over essential school assets. While not all of these policies may be necessary for schools outside of CMU's jurisdiction, they are nevertheless useful in stimulating reflection on the broad responsibilities of charter school boards that contract for management services. CMU's *Educational Service Provider Policies* are available on the CMU Charter Schools Office's website, http://www.cmucso.org/, or upon request to the office at (517) 774-2100.

Federal Tax Exemption and Contracting for Management Services

Charter schools may be exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (IRC) if they are organized and operated exclusively for charitable, educational purposes. Tax-exempt status also permits tax deductibility for charitable contributions to the school. Some state laws require that charter-holding entities be tax-exempt; others do not.

In principle, contracting with management companies should not create a conflict or obstacle for charter schools seeking federal tax-exempt status. The structure and provisions of school management relationships, however, must be carefully designed in order to meet the Internal Revenue Service's standards for federal tax exemption. In the IRS' view, "For a charter school to establish exemption under IRC 501(c)(3), whether it purchases some or all of the services required to operate, it must establish that it is organized for the benefit of the public and not for the benefit of any private person [or entity], such as a service provider."[4]

The following pages provide an overview of essential considerations for charter schools contracting for management services and seeking federal tax exemption. This information is excerpted from internal **guidance published by the Internal Revenue Service** concerning charter schools that contract with for-profit entities for management services. While this guidance is written for IRS agents who evaluate applications for federal tax exemption, it is also directly informative for charter school boards seeking to meet the IRS' standards for exemption. The full text of this guidance ("Topic J. Charter Schools") is available on the IRS' website at http://www.irs.gov/prod/bus_info/eo/topicj00.pdf. General information on requirements for federal tax exemption is available at http://www.irs.gov/bus_info/eo.

[4] "Topic J. Charter Schools," Terry Berkovsky et al., *Exempt Organizations Continuing Professional Education Technical Instruction Program*, Internal Revenue Service, 2000.

Federal Tax Exemption and Contracting for Management Services

Excerpted from "Topic J. Charter Schools," Terry Berkovsky et al., *Exempt Organizations Continuing Professional Education Technical Instruction Program,* Internal Revenue Service, 2000:

When considering exemption with respect to charter schools that have contracted with for-profit entities for management services, the Service is particularly interested in whether the charter school board remains in control and continues to exercise its fiduciary responsibility to the school. The board may not delegate its responsibility and ultimate accountability for the school's operations to a for-profit company without raising the issue of whether the organization is operating for the private benefit of that company. The following discussion highlights some of the factors the Service considers when looking at a charter school application and discusses the concerns regarding independence of the board of directors and the arm's-length negotiation of contracts.

A. Independent Board of Directors

A charter school board of directors composed of parents, teachers and community leaders provides structural independence. A board appointed or dominated by a comprehensive management company raises questions as to whether the school will be operated for the benefit of the management company. In considering exemption under IRC 501(c)(3), the Service looks to whether a structurally independent board is involved in active oversight of the school's operations, or whether the board has delegated its duties and responsibilities to the management company.

To establish active oversight, the Service evaluates all the facts and circumstances. A board must show that it is not a front for the benefit of the management company. While it is impossible to specify every duty and responsibility a board should undertake, the following are some indicia of independence:

(1) Regular Meetings

Regular board meetings enable directors to play an active role in the direct activities of the school as well as to exercise continual oversight of the management company carrying out its wishes under contract. One or two meetings per year are generally insufficient to establish that the board members are exercising any independent control. Board meeting minutes should reflect the decisions of the board and items considered at each meeting.

(2) Conflict of Interest

The board should have a conflict of interest policy requiring members to disclose all financial interests they have in any service provided to the school. Procedures for determining when a conflict of interest exists, for addressing the conflict and for recording the resolution of the conflict should be included in the school by-laws. See CPE-2000, Tax-Exempt Health Care Organizations Revised Conflicts of Interest Policy, topic E, for additional information regarding conflicts of interest.

(3) Oversight

The board should oversee the operations of the management company and retain the ultimate responsibility for meeting the terms of its charter. The board, rather than the management company, should set and approve broad school policies such as the budget, curriculum, admissions procedures, student conduct, school calendars, and dispute resolution procedures.

Federal Tax Exemption and Contracting for Management Services continued

(4) Fiscal Responsibility

Boards should have the responsibility and take appropriate action to ensure the fiscal health of the school.

B. Arm's-Length Negotiation

To establish exemption under IRC 501(c)(3), a charter school must show that contracts, especially comprehensive management contracts, have been negotiated at arm's length and are for the benefit of the school rather than the service provider. Boilerplate contracts may be an [indication] that the terms of the contract were not the subject of negotiations between independent parties. Representation of both the school and the management company by the same attorney is also an indication of the absence of arm's-length negotiations.

C. Contract Terms

When reviewing a charter school contract for management services, the Service is concerned that the terms be consistent with fulfillment of the school's exempt purposes. Some contract terms may result in a finding that the school is operated for the benefit of the management company and preclude exemption. Areas of concern include:

(1) Length of Contract

The contract's term greatly influences the board's ability to monitor and evaluate the management company's performance. There is a need to balance the management company's interest in a long-term contract with the school's need for flexibility in changing companies and meeting its fiduciary responsibility.

(2) Board Policies

The general policies concerning the operation and management of a charter school should not be contracted away. These broad policies help define the school's identity.

(3) Services

Comprehensive school contract packages place much of the control of the day-to-day operations in the hands of the management company. Responsibilities of both the company and the school should be stated in the contract.

(4) Personnel

Principals, teachers and staff may be employed directly by the school or may be employees of the management company. However, the existence of an anti-compete clause prevents a school from hiring the personnel that it has utilized in operating its school (principals, teachers, etc.) for a specific length of time after termination of the management contract. This practice usually serves the private interests of the management company and limits the school's ability to terminate the contract.

Federal Tax Exemption and Contracting for Management Services continued

(5) Compensation

Management company fees must be reasonable and commensurate with the services provided. A management fee structure should not be based on total income (i.e., all fees, grants, contributions, and unusual receipts). Compensation should not be above market rate generally charged for the service provided. This can be established through evidence of comparative shopping for services.

(6) Termination

A service contract should specify the provisions for termination and the procedure for evaluating when the terms of the contract are in default. Termination provisions that unreasonably restrict and limit the options of the school are evidence of private benefit to the service provider.

D. Name Identification

In many cases, contractual provisions require a charter school to attach the management company's name to the school (i.e., Company X Charter School or Charter School, a Company X affiliate). "Name-branding" has no clear exempt purpose. It links management companies to exempt schools and allows the company to draw goodwill from the relationship. It allows the management companies to build name recognition without additional expense. It also places a contractual burden on the charter schools, making it more difficult for the school to terminate the relationship with the management company. A "name-branding" requirement may be an indicator of private benefit, depending on the facts and circumstances.

E. Ancillary Services

Comprehensive school management companies may provide other services directly or through affiliates. These services may include cash advances for start-up funds, capital loans, facility leasing, technology contracting, furnishings, fixtures, textbooks, and just about anything else a charter school may need. The Service recognizes that such services are essential for start-up schools. However, the Service will examine these agreements carefully to determine whether the terms were the result of arm's-length negotiation with an independent charter school board or are, in effect, adhesion contracts with a captive school board.

Conclusion

States are adopting and refining charter school legislation at a remarkable rate. As this area develops, the Service's guidelines will continue to evolve. However, the general methods used for evaluating public purposes over private interests continue to be applicable. The Service will continue to be concerned that charter schools applying for exemption under IRC 501(c)(3) operate for exclusively charitable purposes and do not operate for the benefit of private management companies and service providers.

Below is a summary of the factors and concerns that are central to the IRS' evaluation of charter school applications for tax exemption.

Critical factors for schools seeking federal tax exemption:[5]

- independence of the charter school board from its management contractor;
- board responsibility for and oversight of the school;
- arm's-length negotiation of contract terms;
- independent legal representation for the charter school board;
- reasonable fee structure and market rates for services;
- reasonable ability to terminate the contract.

Contract terms of concern when seeking federal tax exemption:

- duration exceeding 3-5 years (depending on the term of the school's charter);
- automatic renewal and difficulty of termination;
- staffing restrictions and non-competition/non-solicitation clauses;
- required name-branding (requiring that the school be named after the management company);
- some types of incentive pay packages for the management company.

Compensation plans:

Certain types of compensation arrangements for management contractors may reduce a school's chances of obtaining or maintaining federal tax exemption. The "Compensation and Finances" chapter provides information on key factors considered by the IRS in evaluating various kinds of compensation schemes for management firms.

Applying for federal tax exemption:

Schools wishing to apply for federal tax exemption must file Package 1023, *Application for Recognition of Exemption* under Section 501(c)(3) of the Internal Revenue Code, which may be obtained by calling 800-TAX-FORM (800-829-3676, toll-free). The application and additional information regarding requirements for 501(c)(3) status may also be obtained from the IRS' website, http://www.irs.gov/bus_info/eo/char-orgs.html or by calling 877-829-5500.

[5] While the existence of these factors may decrease a school's chances of obtaining federal tax exemption, their presence is not necessarily wholly disadvantageous. The types of contractual terms listed here may bring certain advantages to charter schools, such as increasing their likelihood of securing long-term, sustained (including financial) assistance from a well-resourced management firm. Charter school boards seeking partnerships with management organizations should weigh with an open mind the advantages, disadvantages, and implications of various types of contractual provisions for the school. It is impossible to generalize about "recommended" contractual terms or provisions for all charter schools seeking management assistance, as each school must negotiate a contract best suited for its own circumstances and needs. Negotiated terms that are optimal for one school may not be ideal or acceptable for another.

III. ROLES AND RESPONSIBILITIES

For any charter school board, a central issue is how to divide roles and responsibilities between the board and those who carry out the organization's day-to-day work. Whether those day-to-day workers are employees of the board or a management organization, clarity in the definition of roles and responsibilities is vital. Since these issues apply not just to charter boards, but to any nonprofit board, charter board members may find it useful to consult some existing resources for charter and nonprofit boards, many of which are compiled in the Charter Friends National Network's resource guide, *Creating and Effective Charter School Governing Board,* available online at http://www.uscharterschools.org/gb/governance/.

Charter boards should strive to foresee and clarify as much as possible and practical up-front.

While it is impossible to specify every role and responsibility in a written contract, charter boards should strive to foresee and clarify as much as possible and practical up-front.[6] This chapter details some options and considerations based on a review of a number of existing management contracts. The chapter begins by outlining some of the core responsibilities of the charter board—responsibilities that cannot ultimately be delegated to a management organization or employees. Then it turns to a host of more specific issues that often present problems in board-management relations.

Though there are many ways to describe the core responsibilities of a charter school board, the following list captures some of the most commonly agreed-upon items:

- meeting the terms of the charter (academic results and compliance with laws and regulations);
- maintaining the health and safety of the students and others in the school;
- establishing and guarding the vision and mission of the school;
- setting broad policies for the school (e.g., school budget, curriculum and assessment frameworks, admissions procedures, codes of student conduct, macro-level school calendars);
- ensuring the fiscal health of the school;
- evaluating the performance of the school's management;
- managing relations with the outside world;
- carrying out other functions specifically mandated by law (e.g., hearing parent complaints).

In identifying these central responsibilities, this guide does not suggest that the charter school

[6] Charter boards, as the entities publicly responsible for overseeing their schools, are presumed to have authority over and responsibility for all matters not articulated in the management agreement. Boards and their contractors might wish to make this clear by including a blanket clause stating that all roles and responsibilities not specifically addressed in the contract belong to the board.

board cannot generally delegate the day-to-day work involved in carrying them out. Rather, the idea is that the board retains ultimate accountability for these central responsibilities—accountability it cannot assign to a management organization or anyone else. In fact, many would argue that it is vital that the board *not* become involved, except in extreme circumstances, in daily management.

If the board does not give the company a significant degree of autonomy, it may be difficult for the board to hold the company accountable for results--since responsibility for poor performance is hard to assign if everyone is involved in day-to-day decisions. One reason why defining roles and responsibilities up-front is so important is to ensure that on a daily basis, the management company can operate the school without micro-management by the board, and can ultimately be held accountable for its actions.

***Scenario:** Micromanagement by the Board*

The board of Southway Charter School has a five-year contract with Skyrocket Learning Systems for comprehensive management of the school. The contract makes clear that Skyrocket is responsible for hiring and supervising school staff, but under state law the board is officially the employer.

Before the school opens, the board directs Skyrocket to employ one of the founding parents, Mr. Fredrick, as the school's technology coordinator. Skyrocket objects, pointing out that the new school principal has already selected a person, much more qualified than Mr. Fredrick, for the post. But the board insists, citing Mr. Fredrick's extensive volunteer effort in the school's start-up phase as evidence of his commitment to the school. Since the board is the legal employer, Skyrocket gives in. For the first six months of the school's operation, Skyrocket finds itself continually backing up Mr. Fredrick by dispatching its technology director from a nearby school, straining the other school's technology resources.

After the holiday break, the Southway board chair announces that due to parent complaints he has received, two teachers will have to be replaced. Skyrocket again objects, citing overall evidence of parent satisfaction and strong preliminary test results by the students. Again, the board insists, and Skyrocket has little choice but to go along.

Understandably, some management organizations are not eager to make significant changes in their basic programs from school to school. They have tested certain approaches and found them to work; they are seeking to attain scale with particular methods; and they are interested in building an identity around the way their schools function. Charter boards need to know up-front how flexible management organizations will be about these policy areas.

In addition, to the extent that a management organization invests large sums of money in the development of a school in the expectation of long-term returns, it is likely to want more rather than less control over how the school does business. For example, suppose a management company invests several million dollars in a school's facility and other start-up costs. To recoup that investment, the firm will need to operate the school successfully for several years.

For these reasons, firms may be reluctant to leave major decisions about the school's

instructional program, staffing, or budgeting to others. In essence, boards may face a tradeoff between the level of investment and accountability the management company takes on and the level of control the board can wield. There is no right answer to dealing with this tradeoff, but boards that confront it need to do so with their eyes open. Management organizations may seek some protection against board micromanagement in the contract. One contract reviewed for this publication, for example, gives the management company the right to terminate the contract if the board refused to enact its "reasonable recommendations."

Scenario: *Conflict over the Curriculum*

Midway through the second year of its contract with Everest Education Management, Bright Tomorrow Charter School's board conducts an agreed-upon day-long visit to the school to assess progress. Debriefing after the visit, several board members express concern about the apparent lack of focus on arts and music in the curriculum. Arguing that arts and music are a vital part of a well-rounded learning experience, the members ask Everest to devise a plan for increasing these offerings in the coming school year.

Everest responds that any significant change in the curriculum is impossible at this stage of the contract. The school is under a strict accountability contract with the authorizer that, by agreement of the board, focuses on reading, mathematics, social studies, and science achievement by the students. While the current minimal arts and music program will continue, Everest is unwilling to devote scarce time and resources to any increase. When board members protest, the company points to Bright Tomorrow's contract with Everest, which clearly spells out the school's curriculum.

In thinking through a contract with a management firm, the board's key priority should be to ensure that the agreement empowers the board to fulfill its responsibilities. Contracts can appropriately empower boards in several ways:

- *Direct authority*: by stating clearly that certain responsibilities will be fulfilled by the board.
- *Delegation with information*: by stating clearly that the management organization will carry out certain responsibilities and requiring the management company to provide certain kinds of information to the board (on a timetable) so the board knows whether delegated responsibilities are being fulfilled.
- *Retained decision-making power*: by setting forth decision-making or sign-off procedures that ensure the board has final approval at important junctures (e.g., annual budget-setting; significant expenditures; the establishment of annual enrollment procedures; the selection of the principal).

Each of these three options places a tool in the hands of the board that enables it—directly or indirectly—to fulfill its responsibilities. The primary way in which boards create these tools is by adopting a comprehensive set of *policies* on a range of important issues. The policies set parameters within which the management company and school staff must work, outline critical decision-making processes, and establish the formal lines of communication between board and management. Not all boards necessarily need to devise policies in all areas from scratch.

Management organizations may come to the table with specific policies already in mind; these pre-developed approaches may in fact be one of the characteristics that makes a particular management company attractive to a board.

The chart below provides a sampling of issues policies may address; then the following sections provide more details about three challenging areas: legal compliance, personnel, and subcontracting. Other vexing issues are subsequently addressed in other chapters of this guide.

Sorting Out Responsibilities Between Boards/Management Companies

Responsibilities	***Sample Issues***
Curriculum, instruction, and assessment	What curriculum, instructional strategies, and assessments will be used? What standards do students have to meet for promotion, graduation, and other purposes? What process will be followed in making major changes in standards, curriculum, instruction, and assessments?
Evaluation of management company's performance	(see "Performance Oversight and Evaluation" chapter, on page 43)
Facilities	(see also "Physical Property" section on page 71)
Fiscal affairs and budgeting	(see Compensation and Finances chapter on page 56)
Fundraising and revenues	Whose job is it to seek outside grants and donations? Whose job is it to maximize public revenues to the school?
Insurance	Who is responsible for obtaining insurance required by law (or prudence)?
Legal and regulatory compliance	(see Legal Compliance discussion in this section on page 27)
Parent involvement	Does the board have certain standards regarding parental involvement and influence in the school that the management company must meet? Whose job is it to recruit and organize parent volunteers? Who handles the school's parent grievance procedure?
Public relations	What is the board's role in responding to the media? What is the board's role in approving public relations materials (media releases, marketing materials, website contents, etc.)?
Reporting (financial and academic)	(see Legal Compliance discussion in this section on page 27)
Staffing / personnel	(see Hiring, Firing and Supervising discussion in this section on page 29)
Student discipline	What is the school's student code of conduct? What are the grounds for suspension, expulsion, and other major disciplinary actions, and what procedures will be followed in taking them? What is the board's role in ensuring due process for students (i.e., are hearings before the board part of certain disciplinary actions)?
Student recruitment and enrollment	Who establishes the school's: ♦ target population? ♦ admissions standards (if any)? ♦ admissions calendar? Whose job is it to market the school to families? If the management organization, how is it held accountable for filling student seats? Who administers the lottery or other admissions process?

A. Legal Compliance

Though we often think of charter schools as "deregulated," they still face a host of legal and other requirements. Some of these are federal requirements that cannot be waived by state law (such as special education); some are state laws and regulations that remain in force for charter schools; still others are specific requirements imposed on charter schools alone (such as charter school reporting requirements). Charter boards are well-advised to understand these responsibilities fully.

Ensuring compliance with laws and regulations remains one of the charter board's central responsibilities.

Since these requirements can become highly technical and complex, helping to fulfill them is one of the most valuable contributions a management organization can make to a charter school. Especially if they operate more than one school, management organizations can develop expertise and systems that are valuable to the schools they serve.

At the same time, ensuring compliance with laws and regulations remains one of the charter board's central responsibilities; the board is ultimately accountable if the school runs afoul of legal requirements, even if the board has delegated certain compliance work and reporting duties to a management company. Hence a basic dilemma of contracting: how can the board take full advantage of delegating compliance while still ensuring that the school complies?

Here are some approaches found in actual contracts:

Blanket commitments by management organizations to comply. Some contracts reviewed for this guide contain blanket statements obligating the management organization to comply with the terms of the charter and all relevant laws in carrying out its duties, perhaps incorporating the school's charter in the contract. While such commitments do not guarantee that management will fully comply, they give the board clear redress in the event that the contractor crosses the line (e.g., indemnification for costs incurred, contract termination). Here is an example of such language:

> "In providing services required by this Agreement, [the management company] must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations and all applicable court orders, court decisions, and administrative decrees."

Before inserting such a provision, though, it is worth exploring whether the management company is exempt from any laws and regulations that would constrain the board itself. For example, is the management company required to follow state procurement laws when making major purchases or entering into significant contracts? These questions are important to answer up-front. If the management company is exempt in some cases, significant economies and flexibility can result that benefit the school. If the company is not exempt, boards need to know before it is too late.

Specific enumeration of compliance responsibilities. Some contracts include specific lists of compliance-related tasks one party or the other will carry out. Since there are so many

requirements to enumerate, such a list will never be exhaustive; the blanket provision is still important. But enumeration can still be helpful because it reminds the parties up-front of some of the most important compliance issues and makes it less likely that something will slip through the cracks. Examples of particular items to address include: background checks on employees, report-filing, payroll accounting, pension contributions, special education compliance, meeting health and safety standards, open meeting requirements for the board and others.

Advance board review of important reports or documentation. Much compliance involves reporting or documentation. A board can oversee such responsibilities by mandating advance review of reports or documentation by the full board or some subset of it. Because such reviews are time-consuming, most boards will probably want to limit them to areas they regard as particularly vital or vulnerable to error or misrepresentation.

After-the-fact review. As a substitute for advance review, boards can receive copies of reports and documentation as they are filed. This practice is not optimal, though, because it gives boards no advance notice of potential issues.

Optional board inspections. It almost goes without saying that board members have a right to visit the school at any reasonable time. Such visits, conducted with an approach and at a frequency that does not impair the staff's ability to operate the school effectively, can be an important information-gathering tool.

Thoughtful management of incoming compliance information. In addition to thinking about board involvement in outgoing reports, it is also important to examine how the school will handle information coming in from various regulatory bodies—the charter authorizer; the state department or board of education; the local school district or school board; and various other local, state, and federal agencies that exercise authority over the school. For example, suppose the charter authorizer notifies the school when it fails to meet certain reporting requirements. Who receives that notice at the school? The board chair? The principal? An employee in the management company's main office?

Clearly, there are reasons why all these parties would want to receive such notices. It may sometimes be possible for them all to do so, but regulatory bodies will often correspond only with a single contact person. In such cases, it is important to clarify that copies of such correspondence will be shared appropriately with all parties. For example, many management contracts require the charter board to notify the management company expeditiously in the event that the school has been "written up" for a violation. Here is one sample of such language:

> "If the School is notified by [the state], [the state board of education], or any other governmental authority or by any other person or entity, that it may be in violation of the Charter School Law or any other applicable law or regulation, then the school shall immediately notify [the management organization] of the claimed violation [and vice versa]."

***Scenario:** Poor Information Flow about Compliance*

The charter law in Southway Charter School's state mandates that all charter school teachers be certified according to state guidelines. An audit of the school in the spring reveals that two faculty members lack the proper credentials. Southway's management contractor, Skyrocket Learning Systems, pledges to remedy the situation.

Over the summer, Skyrocket's corporate headquarters submits a request to the state licensure office for alternative certification for the two faculty members under a statute that allows professionals with advanced degrees to teach in public schools as they pursue certification. The licensure office sends a reply to Skyrocket headquarters authorizing the teachers to stay on board pending approval of their applications.

On a routine visit to the school the following fall, Southway's authorizer discovers that the two faculty members are still at work. Unaware of the alternative certification, the authorizer pulls aside the school's board chair and asks why the teachers haven't been replaced. Embarrassed, the board chair says he doesn't know. The authorizer writes up the apparent violation, setting off a tense volley of correspondence between the board, Skyrocket and the authorizer.

B. Hiring, Firing and Supervising the School Director

Of all the decisions schools make, perhaps none are more essential than those regarding staff, especially the school principal (or head or director). Who decides who will be the principal of the school? Who reviews his or her performance? Who holds the power to dismiss the principal? Legally speaking, whose employee is the principal?

These questions are vital because confidence in the principal on the part of those responsible for the school's functioning is critical. When a charter board contracts with a management organization, both the charter board and the management organization must stand behind a decision to hire or fire a principal. In situations where the board and company are unclear on these fundamental choices, trouble is sure to follow.

***Scenario:** Staff Termination Decisions*

The contract between Bright Tomorrow Charter School and Everest Education Management, states that the board and the company will jointly approve the selection and, if the situation warrants, termination of the school director. The director, Mr. Goodling, is trained by and reports to Everest's central management; however, under the state's charter law, he is employed by Bright Tomorrow's board.

At the school, he works closely day-to-day with Ms. Roselli, the executive director of the charter school's founding organization, who is employed by and reports to Bright Tomorrow's board. The arrangement is designed to foster collaboration between Mr. Goodling and Ms. Roselli, while enabling each to complement the other's skills. The management agreement states that Mr. Goodling will take charge of Bright Tomorrow's academic program while Ms. Roselli will head the school's business functions and community relations. In practice, however, their responsibilities overlap and they work together on many matters.

At the end of the year, Ms. Roselli recommends to Bright Tomorrow's board that Mr. Goodling be terminated because his performance has been unsatisfactory. Everest Education Management disputes this, declaring that Mr. Goodling has met all expectations and that Ms. Roselli must stay out of Everest's personnel decisions. Ms. Roselli argues that Everest does not know Mr. Goodling's performance and weaknesses as well as she does, since Everest is based 800 miles away while she has worked with him every day.

Contracts should state clearly who makes the ultimate decision about hiring and firing the principal. But no contractual language can avoid the potential underlying conflict —disagreement between board and management organization about this central issue of school management.

As a result, much more important than contractual language is arriving at consensus up-front about the following two issues: (1) the qualities of an ideal principal for the school, and (2) the criteria that will be used to evaluate the principal's performance. Agreement on those issues, prior to discussions of particular individuals, can go a long way toward defusing this tinderbox of an issue.

Still, how can management contracts create arrangements that minimize this potential problem? Here are some of the issues that must be addressed, with some options that have been included in actual management contracts:

Whose employee is the principal? In theory, the principal could be the employee of either the charter board or of the management organization. In practice, a particular school's choice may be constrained by state law. So a first step in addressing this issue is determining whether state law requires a charter school's principal to be employed by the charter board itself. Even if a state does not require such employment, state law may confer advantages and disadvantages on different arrangements.

For example, some states may exclude employees of private management companies from state retirement and health benefits. Alternatively, states may impose upon charter boards special

requirements for licensure, compensation and termination that do not apply to private employers. Since these factors vary from place to place, existing contracts set forth different arrangements, with some stating that the principal works for the company and others making the charter board the formal employer.

How is the principal hired? Whoever the employer is, a charter board may want to consider carving out roles for both itself and the management company in the hiring process. Most of the contracts and extra-contractual arrangements reviewed for this guide design the process so that both the board and the management company must agree on a candidate. As the box on the next page suggests, this mutual agreement may be achieved in several different ways.

A charter board may want to consider carving out roles for both itself and the management company in the hiring process.

How can the principal be dismissed? Though the selection of the principal can present difficult issues, disagreement over dismissal can be infinitely more challenging. It is in cases of potential dismissal that criteria used to evaluate principal performance are absolutely vital—they at least allow the parties to debate the question based on some common understanding of what the basis of judgment should be. Ultimately, however, disagreement may still arise, and the models in the box present different ways of dealing with this potentially fractious issue.

Though issues of principal selection and dismissal stand out as the most critical staffing questions, many of the same concerns may arise in connection with teachers or other employees. Typically, charter boards delegate this decision-making to the management company, playing less of a role than they do in principal selection. If a popular teacher is let go, however, the board is likely to receive an earful from parents, even if teacher dismissal is a management responsibility.

A minority of contracts reviewed for this guide give the board the right to interview candidates and provide non-binding input on the selection of all school staff. Such an approach, however, risks blurring responsibility for the conduct of school affairs and may thus compromise a board's ability to hold the management company accountable for results. Boards considering such provisions should weigh this concern in their calculations. As with the principal's status, state law may govern some of the formal relationships among board, management company, and these employees, so check each state's statutes carefully.

"Getting To Yes" on Principal Selection and Dismissal: Different Models

The company short-list. The management organization recruits a field of potential principals, narrows the field to a short-list of acceptable candidates, and then asks the board to select one. If none is acceptable to the board, the company re-opens the search.

The company advises, the board decides. The management organization selects a single candidate, and the board decides "yes" or "no." If no, the management organization produces a second choice or re-opens the search. In the case of dismissal, the company may recommend termination, but the board makes the ultimate decision.

Separating hiring and firing. There is no particular reason why the same procedures should apply to both hiring and firing of the principal. One management company follows the "company advises, board decides" approach when it comes to hiring, but insists on the ability to dismiss a principal unilaterally.

The joint search committee. A committee including board members and management organization representatives conducts the search and comes to agreement on one or more candidates. The full board and the management company's leadership must approve the search committee's decision.

An out for the management company. One contract provides an escape clause for the management company: if the board fails to ratify the company's recommendations on the hiring or dismissal of the principal, the company has the right to terminate the contract.

An out for the board. Though it does not appear in the contracts reviewed, an analogous provision could allow the management company to hire and fire the principal as it sees fit, but give the board the right to terminate the contract over principal-related disagreements.

The backup plan. Some contracts provide for arbitration in the event that the board and the management company cannot come to agreement on this issue (or others). In the typical arbitration provision, the parties agree to pursue arbitration under the rules of an external body like the American Arbitration Association. Clearly, such measures are a last resort. Intermediate steps, such as revisiting the characteristics of an ideal candidate and a renewed search, must come first.

Hiring and firing bracket a principal's involvement in the school, but what goes on in between is also of critical importance. In a board-management company relationship, it is possible for the school director to be placed in a difficult position of having two sets of supervisors—the board and the officials of the management company. Conflicting signals can make it extremely difficult for the school director to do his or her job—and to assume accountability for results. Defining roles and responsibilities clearly can help minimize such conflicts, but board and management company alike should be constantly on guard to avoid ambiguity in this area.

C. Subcontracting

***Scenario:** Conflict over Subcontracting*

Rainbow Charter School has contracted with Everest Education Management to provide comprehensive management services. Everest subcontracts special education service delivery to another firm, Sunburst Specialized Education Services, a company with proven expertise and track record in providing special education services in the city. Nevertheless, an evaluation conducted in the school's second year by Rainbow's authorizer reveals a few serious complaints about special education services at the school. The evaluation is summarized in the local newspaper. Rainbow's board members are upset that the evaluation and the news article reflect poorly on the charter school. They demand that Everest find a new subcontractor.

Everest retorts that Sunburst has an excellent overall record, that the problems at Rainbow were flukes, and that Sunburst and Everest are working together to fix the deficiencies. In addition, Everest argues that relative to the fee schedule under Everest's multi-school contract with Sunburst, costs would rise substantially with another contractor. In any case, Everest says, the contract between Rainbow and Everest gives the company clear authority to subcontract as it sees fit.

Just as the board may decide to contract out the management of the school, the management company may want to subcontract with other organizations to carry out certain responsibilities. Such subcontracts can be very valuable to the school if they give the school access to specialized expertise not possessed by the management company, or if they allow the school to achieve significant cost savings. However, subcontracting also creates another link in the accountability chain tying the board to the school's day-to-day operations. It means that the board is delegating authority to yet another organization. Most boards do not mind if small-scale or ancillary functions are carried out by third parties. But when subcontractors begin to provide core services to the school, such as classroom teaching, or assume important compliance responsibilities, some boards seek to ensure that subcontracts meet some threshold of accountability. Such accountability is particularly important when all contracts entered into by the school (including subcontracts by the management company) must meet legal requirements relating to issues such as wage and hour laws, access for minority- and women-owned firms, and other procurement procedures.

The contracts reviewed for this resource guide take a wide range of approaches to subcontracting by the management company. These approaches lie along a continuum: at one end, the management company receives complete discretion to subcontract. At the other end, the board must approve all subcontracts:

- *Management company discretion.* In many contracts, the management company may subcontract as it sees fit for the provision of services needed by the school.

- *Limited management company discretion.* In most cases, the management company may subcontract at will for services, while the board reserves the right to approve contracts that meet certain criteria. For example, one contract requires board approval for any subcontract greater than $50,000; others state lower threshold amounts. Some contracts require approval for any subcontracts that relate to specific activities, such as special education or general teaching and instruction. Others require board approval for any subcontracts to subsidiaries or other affiliates of the management company in order to deter "self-dealing."
- *Review of all contracts by a board representative.* One contract empowers a "board representative" to review all subcontracts entered into by the management company in order to ensure compliance with the complex web of contracting regulations to which the school is subject.
- *Review of all contracts by the full board.* One contract requires board approval for all subcontracts entered into by the management company.

The bottom line is that the board must hold the management company responsible for its activities.

Whatever approach the parties take, the bottom line is that the board must hold the management company responsible for its activities, including those it subcontracts out to third parties. Just as the board is ultimately accountable for what happens at the school, the management company must be accountable for activities under its supervision.

IV. CONTRACT DURATION, RENEWAL & TERMINATION

The contract's duration and provisions for renewal and termination will greatly influence the charter school board's ability to monitor and evaluate the service provider's performance. The service contract should articulate the provisions for renewal and termination, as well as the procedures for evaluating whether the contractor has met agreed-upon expectations. It is also useful to remember the Internal Revenue Service's view on this issue for charter schools – that "termination provisions that unreasonably restrict and limit the options of the school are evidence of private benefit to the service provider" (explained earlier in the section on "Federal Tax Exemption and Contracting for Management Services).[7]

Scenario: *Authorizer's Dissatisfaction with Management Organization*

Chestnut Street Charter Academy has a five-year contract with Skyrocket Learning Systems for comprehensive school management. This contract's term coincides with that of the Academy's charter and will be renewed automatically for another five years if the school's charter is renewed for another five-year term.

As of the school's third year of operation, Chestnut Street's board is satisfied with Skyrocket's performance. However, the school's authorizing agency contacts the board with serious complaints about Skyrocket's performance and conduct. The authorizer notifies the board that the school may face revocation of its charter if Skyrocket's conduct does not dramatically improve within the next six months.

Some management contracts terminate yearly and are renewable yearly. From a charter school board's perspective, this type of agreement allows the most flexibility and simplest opportunity to act upon its yearly evaluation of the contractor's performance in operating the school (whether that evaluation is positive or negative). At the same time, this type of arrangement may be difficult to obtain in cases where the charter school requires substantial start-up assistance or a long-term financial relationship with a management provider.

Management agreements that run parallel to a school's charter term (often 3-5 years) are common. Terminating at the end of the school's charter term, such contracts provide the charter school board the option of renewing the contract with the management company – or perhaps selecting another service provider – as the termination date approaches.

However, most contracts reviewed for this guide are self-perpetuating, providing for automatic renewal either year-to-year throughout the charter term, or upon renewal of the school's charter. The terms of automatic-renewal agreements in these contracts range from one year

[7] "Topic J. Charter Schools," Terry Berkovsky et al., *Exempt Organizations Continuing Professional Education Technical Instruction Program*, Internal Revenue Service, 2000.

A school's charter with its authorizer and its management agreement are two independent contracts entailing distinct obligations and responsibilities of and to different parties.

(with subsequent renewal decisions to be made year to year) to five years. Typically, in order to terminate this type of agreement, the party electing termination must provide written notice of its intention not to renew well before (commonly, 3 or 4 months) the end of the contract term.

Charter school boards must carefully consider the ramifications of entering into self-perpetuating or automatic-renewal agreements. Though linked, a school's charter with its authorizer and its management agreement are two independent contracts entailing distinct obligations and responsibilities of and to different parties.

Automatic renewal, by not requiring the charter school board to exercise affirmative selection (or re-selection) of its management provider at the end of a charter term, may obscure these independent responsibilities and weaken comprehensive evaluation of the contractor's performance. As a result, charter boards should carefully consider whether they want their contractual continuation with a particular management organization to hinge on the single question of whether the school's charter is renewed.

One contract examined for this guide sets forth a type of "conditional automatic renewal" provision, making contract renewal dependent on both (1) renewal of the school's charter, and (2) the contractor's performance. That is, while renewal of the management agreement is presumed to be automatic upon renewal of the school's charter, it is also explicitly contingent on the achievement of specified minimum student learning outcomes. In this way, this arrangement includes in the renewal decision an assessment of the contractor's performance at the end of the charter term, distinct from the question of whether the school's charter is renewed.

While considering the issues and options identified above, charter boards will also need to understand the legitimate interests of the management firms with whom they partner. For a variety of reasons, including the potential need for a longer contract term in order to recoup investments in the school, some management companies favor or require assurance of long-term contract continuation.

In particular, firms that offer charter schools critical start-up assistance such as loans, leases, or guarantees may naturally require both: (1) a longer-term commitment – maximizing the school's payback time – with fewer termination options, in order to recoup their investment; and (2) greater control over the school's educational program, personnel, budget, and other operations.

From the perspective of companies investing significant risk capital in charter schools, such provisions are critical to protect their investment and preserve their institutional viability. Conditions that may require special renewal provisions may include loans to the charter school becoming due when the management contract is terminated, or facility leases with "cross-default" provisions that terminate the lease upon termination of the management contract.

Thus, charter schools seeking loans, investments, leases, or other start-up assistance from management firms may find it more difficult to negotiate flexible arrangements such as year-to-year contracts. Conversely, automatic-renewal provisions will increase their access to these types of start-up aid. Charter boards in this position will have to decide whether the typical tradeoff in these circumstances – in essence, less flexibility and control in exchange for greater assistance and risk capital – will better serve the interests of their school.

The following chart summarizes key issues for various renewal options:

Termination/Renewal Options

Structure of Termination/Renewal Provisions	Key Distinctions and Considerations
A. Terminates/renewable yearly	• Offers the charter board the greatest flexibility and ability to act on a yearly evaluation of the contractor's performance, whether that means continuing with the same service provider or selecting another. • Difficult to obtain where the school is seeking substantial start-up investments and financial assistance from a management organization, because recouping such investments usually requires long-term commitments.
B. Terminates/renewable at end of charter term	• Gives the charter board the option of selecting a new service provider or re-selecting its current one, but does not permit the board to do so without cause until the end of the charter term.
C. Automatic yearly renewal	• Operates essential the same as automatic renewal at the end of the charter term (below), binding the school to the same firm for the duration of the charter (absent for-cause grounds for termination).
D. Automatic renewal at end of charter term (contingent on renewal of charter)	• The school may not terminate the contract without cause before the end of the charter term, and contract renewal is determined solely by whether the school's charter is renewed. • May obscure the respective responsibilities of the charter board and the contractor that arise from two *distinct*, if interrelated, performance-based contracts, and may weaken fuller evaluation of the contractor's performance. • Increases schools' access to risk capital and other significant start-up investments (requiring longer-term commitments to recoup) from management organizations.
E. "Conditional automatic renewal": Automatic renewal at end of charter term, contingent on renewal of charter and on attainment of explicit educational results	• Instead of contract renewal depending solely on the school's charter renewal (option D above), this arrangement also incorporates an objective assessment of the education provider's performance – separate and distinct from the charter renewal – at the end of the charter term. Thus, this arrangement reduces conflation of the obligations arising from the school's charter and management agreement, respectively. • The school may not terminate the contract without cause before the end of the charter term. • Increases schools' access to risk capital and other start-up investments from management organizations.

A. Termination for Cause

Following is a summary, in no particular order, of the for-cause grounds for contractual termination that appear most frequently in the contracts studied for this guide. Several of the provisions are standard in service contracting; others are specific to the context of contracting for public-school management services.

This is not intended to be a comprehensive list of the reasons for which a charter school board or management company might want or need to terminate a service contract, nor are all of these reasons necessarily applicable to all contracts. In addition to these commonly cited grounds for termination, charter boards should feel free to assert any additional grounds for termination that they believe would be in the school's best interest.

- Any material violation – or failure to promptly remedy a material violation of a term or provision of any of the following: (1) the management agreement; (2) the charter contract between the school and charter authorizer; (3) the charter law; or (4) other applicable laws or regulations.
- Failure by the management company to meet generally accepted standards of fiscal management.
- Insolvency or bankruptcy of either party.
- Revocation, suspension, or termination of the school's charter, or other licenses, permits, or certifications needed for school operation.
- Failure by the responsible party to achieve adequate student enrollment.
- Gross negligence, fraudulent misrepresentation, or other willful misconduct by either party that adversely affects the school's operation, or jeopardizes the school's students or goals.
- Any interventions or financial transfers that deprive the company of management of a substantial portion (a threshold that may be specified in the contract) of its assets.
- Commercial impracticability – In agreements where the management company is obligated to temporarily fund operating deficits that the school may suffer, the contract may permit the firm to terminate the relationship if its operating deficit contributions become commercially impracticable, as determined by the company. For example, one contract reviewed permits the management firm to terminate the relationship if, for two consecutive fiscal years, it is required to contribute to the school's operating costs more than 5% of the school's gross per-pupil revenues for the relevant fiscal year.
- Damage or destruction of property that renders the school's program inoperable.
- Other circumstances beyond the control of either party – for example, a material adverse impact of any applicable law, regulation, or court decision on the ability of either party to carry out its stated obligations.

Additional grounds for for-cause termination that charter school boards may find useful to consider include:

- failure (by either party) to provide information needed by the other party to execute its responsibilities in fulfilling the school's mission;
- failure to produce satisfactory educational results or make adequate progress toward achieving the school's stated learning goals.

The last issue listed above merits further comment. Mention of accountability for achieving specific student learning results is surprisingly uncommon in the contracts studied for this guide. Most contracts tend to give adequate attention to administrative and standard contracting provisions, while overlooking the linchpin of both the school's charter and management agreement. As part of a performance-based contract, the school management agreement's provisions for renewal and/or termination are an appropriate place to reiterate the management firm's responsibility to achieve specific goals for student learning. (This topic is discussed further in the chapter on "Performance Oversight and Evaluation.")

The school management agreement's provisions for renewal and/or termination are an appropriate place to reiterate the management firm's responsibility to achieve specific goals for student learning.

B. Termination without Cause

A minority of contracts reviewed for this publication permit the charter school board to terminate the contract without cause, upon reasonable written notice, such as 90 days. In addition, some agreements allow either party to terminate the contract without cause, upon similar notice, though this provision is more rare.

C. Other Termination Issues

Other termination-related issues that are useful for charter school boards to consider at the initial contracting stage include:

- ***Implications for charter continuation or renewal.*** In considering the possibility of terminating a school management contractor, charter boards should consider to what degree their school is synonymous with the company's "product" or unique educational approach – and how a termination might affect the school's charter status or the renewal decision to be made by the school's authorizing agency. This issue may also arise in other cases where the authorizer's confidence in the school depends on its use of some type of essential contracted assistance.

  Consider, for example, the case of a school wholly constructed according to a particular firm's comprehensive educational design, on which the school was initially chartered. If such a contract were terminated, the school's authorizer might require the charter

board to demonstrate a strong "Plan B" for continuing the school's program in a manner consistent with the approach approved for the charter.

Scenario: *Material Change in Educational Program*

Esperanza Charter School has a five-year contract with Lighthouse Education Centers for comprehensive educational programming and management. About half of Esperanza's incoming students each year are native Spanish speakers, not yet proficient in English. One feature offered by Lighthouse that is especially important to Esperanza is its dual-language, Spanish/English immersion program, which Esperanza's board and school community believe best meets the multiple needs of the school's English language learners, while enabling native English-speaking students to become bilingual. Esperanza's board is very pleased with Lighthouse's services, and the school has a long waiting list.

After Esperanza's third year of operation, Lighthouse Education Centers is sold to another company, Skyrocket Learning Systems. Skyrocket Learning Systems announces that beginning in the next school year, all of its schools serving English language learners will follow a structured English immersion model that Skyrocket has been using successfully in nearly 30 schools across the country. Accordingly, the dual-language program at Esperanza will no longer be offered.

Esperanza's board is dismayed by this news. In addition, upon hearing of Skyrocket's plan, the school's authorizer notifies the board that such a mid-course change in instructional approach would be substantial enough to require re-application for the school's charter, even though Esperanza would have had two years left under its original program.

A substantial change in a school's design and program would require at least formally amending the charter with its authorizer, but might even (depending on the circumstances) jeopardize the charter. Any charter board considering terminating a school management contract would be wise to consult with its authorizer regarding how termination might affect the school's charter status and its chances for renewal.

- ***Intellectual property.*** Termination of an education provider may raise intellectual property issues that would best be addressed clearly in the initial management agreement instead of at the termination stage.

Scenario: *Intellectual Property Dispute*

Honey Creek Charter School has a five-year contract with Everest Education Management for comprehensive educational programming and services. Honey Creek's board has experienced a great deal of turnover. By the school's third year, the board is comprised of members who were not part of the school's founding coalition or involved in selecting Everest as the school's manager. While they like some of the school's programs, the new board does not believe Everest's overall pedagogical approach and management style are well suited for their school goals. They believe they could continue the best of the school's offerings without Everest, while obtaining lower-cost supplemental assistance from a local university.

Honey Creek's teachers are employed by the board, though they are under the day-to-day management and direction of Everest. With some support from Everest, these teachers have developed several innovative programs that the board wishes to continue without Everest, and they believe that the teachers would be happy to continue working for the school without Everest.

The board begins to explore the possibility of terminating the school's contract with Everest. Only then do they learn that Everest claims ownership of all instructional programs, materials and ideas developed by Honey Creek's teachers while under Everest's management. If the contract is terminated, Everest asserts that the school will have to pay a licensing fee to continue these programs.

The "Property" chapter addresses intellectual property issues in greater depth, including a discussion of how such property may be treated upon termination of a contract.

- ***Non-competition/non-solicitation clauses.*** A minority of management companies have attempted to place temporary restrictions, in the event of contract termination, on a charter school's ability to hire current or previous employees of the management company. Among all the contracts reviewed for this guide, these provisions appear in contracts negotiated by only two companies. Below is a summary of the "non-competition/non-solicitation" provisions that were encountered. This type of contractual restriction is rare, and its enforceability would depend on its scope and structure, as well as state law. In addition, the presence of such provisions may jeopardize a school's federal tax-exempt status, as the Internal Revenue Service may view this as evidence of lack of independence from a contractor (see the section on "Federal Tax Exemption and Contracting for Management Services," beginning on page 18).

Firm	Type of Restriction	Duration (post-termination)
X	Prohibits the charter school from employing – or causing or permitting any of its affiliates, agents, or independent contractors to employ – any person who has been an employee, agent, or independent contractor of the management company during the previous year.	1 year
Y	Prohibits the charter school and its affiliates from hiring or soliciting any staff of the management company.	18 months

- ***Assets and debts.*** Upon the termination of a contract, what may happen to a school's physical assets (including its facilities) and start-up debt? See the "Property" chapter of this guide for a discussion of these issues.
- ***Indemnification.*** In the event of default or breach by a management company, some contracts hold the company liable to the charter school board for any additional cost (beyond the agreed-upon contract cost) for procuring comparable services from another provider. Management organizations may likewise require indemnification for losses where the charter school is in default or breach.
- ***Ensuring an orderly transition to new management.*** Neither school governing boards nor management contractors like to contemplate the scenario of termination when sealing their partnership, and many contracts are deliberately structured to make termination extremely difficult. Even so, termination remains a possibility, however remote. If a termination does occur, charter schools can be spared much disruption and grief by having an established plan in place that addresses how the board and departing contractor will cooperate through the transition. These issues are discussed in the last chapter of this resource guide, "Contingency Planning for New Management."

If a termination does occur, charter schools can be spared much disruption and grief by having an established plan in place.

V. PERFORMANCE OVERSIGHT AND EVALUATION

The foremost responsibility of a charter school board that contracts for educational programming is to ensure that the contractor performs satisfactorily, meeting agreed-upon goals and standards for student learning. Charter boards are accountable for both the educational and operational performance of their schools. A service provider's contractual responsibility for comprehensive programming and management does not diminish the board's *direct, non-delegable* accountability for the goals stated in the school's charter or accountability agreement.

Charter boards may be interested in a range of issues regarding their school's operations and effectiveness – e.g., parent, student, and professional satisfaction; school climate; parent and community involvement; management efficiency – and may articulate ways to assess a contractor's success in meeting specified goals in such areas. In addition, boards have the public responsibility to ensure their school's compliance with applicable laws and regulations, and should plan and communicate timelines and procedures to fulfill this duty.

Boards should ensure that any agreement with an educational service provider articulates the student learning outcomes expected from the contract.

No less attention should be given to the obligation to produce agreed-upon educational results, which justifies the school's existence. Thus, boards should ensure that any agreement with an educational service provider articulates the *student learning outcomes* expected from the contract. This is necessary for the contractor to understand its charge, and for the board to evaluate the provider's performance intelligently and fairly.

Many of the contracts examined for this guide give detailed consideration to a range of administrative issues that arise in contracts for comprehensive school management services. Surprisingly few, however, give sufficient attention to how the charter school board will carry out its obligation to hold its management contractor accountable for *educational* performance. This chapter is intended to serve as a resource on this issue.

A. The First Step: Clarifying the Relationship and Responsibility for Oversight

Charter boards contracting for educational programming must negotiate two types of accountability agreements or plans: (1) an agreement with the school's authorizer (part of or attached to the charter) setting forth the performance goals for which the *board* will be accountable and how such achievement will be assessed; and (2) an agreement with the educational service provider, articulating the educational goals the *contractor* must achieve and how they will be assessed. In contracts for comprehensive educational programming and

services, the two sets of goals will match one another, as the contractor agrees to deliver an educational program that fulfills all the school's needs.

Clear explanation of the board's oversight methods and procedures will smooth the relationship between the school and management organization.

The board is responsible for overseeing the service provider's adherence to the overarching charter and fulfillment of the performance contract. Thus, it is helpful for the contract to set forth clearly this responsibility to monitor the contractor's performance, as well as the contractor's responsibility to produce agreed-upon student learning results and to report regularly on the school's academic progress. At the same time, boards must understand how to oversee a service contract without micromanaging or hampering the provider's performance.

As this chapter will discuss further, clear explanation of the board's oversight methods and procedures will smooth the relationship between the school and management organization by protecting the contractor's freedom to operate most effectively, while clarifying both parties' responsibilities and expectations. In addition, as noted earlier, boards should bear in mind that the more accountability they desire of a management organization, the more autonomy and authority the contractor will need to perform as expected.

Below is sample language from a contract that articulates both (1) the accountability of the school management company to the charter school board to achieve specifically referenced student performance standards; and (2) the responsibility of the charter school board to oversee the company's performance under the contract:

> "[The contractor] shall be responsible for and accountable to the Board for the performance of the Charter School under this Agreement, according to the [state-mandated assessment program], and other assessment strategies as outlined in Appendix B, Assessment and Accountability Plan, to be provided by [the contractor] and approved by the Board, and as provided for in the Amended Charter Application . . . [The contractor] shall provide information to the Board on a regular periodic basis, as set forth in detail below, to enable the Board to monitor [the contractor's] educational performance and the efficiency of its operation of the Charter School. Nothing in this paragraph shall be construed to be in derogation of the Board's ultimate legal authority and responsibility for the School under its Charter; rather, it shall be construed as effectuating, in part, those provisions of the Board's Amended Charter Application which specifically state that, while [the contractor] will manage the School, [the contractor] will also be accountable to the Board for the operation of the School and the achievement of student learning."

B. Developing an Accountability Agreement with an Educational Service Provider

The following steps will help charter boards develop meaningful educational accountability agreements as part of their contracts with school management or design organizations:

Align the performance measures in the contract with the school's mission and overarching charter accountability agreement. To realize their school mission, charter boards should ensure that any contract with an educational service provider articulates *multiple school-wide and student performance measures that are aligned with that mission.* These should be based directly on the school's own charter contract or related accountability agreement with its authorizer. Clear alignment will ensure that the school's foundational priorities are enshrined in the performance-based contract with the education provider. It will also give the contractor a necessary blueprint for performance, and by meeting the stated goals, the contractor will clearly advance the school in achieving its mission.

Scenario: *Creating Assessments Aligned with the School's Mission*

Worldbridge Charter Academy has contracted with Lighthouse Education Centers for Lighthouse's curriculum, customized to suit Worldbridge's needs. Worldbridge's charter states that the school will offer an international-studies focus, which Lighthouse has never provided at any other schools it manages. According to their agreement, Lighthouse would work with Worldbridge during the school's start-up summer to develop an international-studies curriculum amounting to one-quarter of the total curriculum, and would hire staff qualified to deliver the program.

The school's first year appears to go smoothly, with an international-studies program in place. At the end of the year, the charter authorizer asks for some evidence of Worldbridge's progress with the international-studies program, and Worldbridge's board would like to evaluate Lighthouse's performance in part based on student achievement in this program. However, Lighthouse can provide only the students' first-year results on the state-mandated tests and Lighthouse-developed assessments. None of these specifically measures student learning in the new international-studies curriculum that is central to Worldbridge's mission.

A number of contracts reviewed for this guide incorporate by reference another document – i.e., the school's charter application, charter contract, and/or separate academic accountability plan.[8] Charter boards choosing to do this (instead of restating the school's performance goals and measures in the management agreement itself) should ensure that the referenced document indeed contains the specificity and detail needed for (1) the educational provider to understand its charge, and (2) the board to evaluate the contractor's performance meaningfully and fairly.

Establish clear, specific, measurable goals for student learning at all grade levels, which the educational contractor will be accountable for achieving. The service provider must know the specific criteria by which its performance will be judged – and when it must accomplish each objective. In a contract for comprehensive education management, the criteria set forth in the management contract should, at a minimum, include all the goals the school must achieve to maintain and renew its charter.[9]

[8] As noted earlier under "Pre-Contracting Considerations," where such a document is incorporated in the management agreement, the latter should make clear that the former will prevail in the event of conflicting terms or provisions between the two.

[9] In some charter jurisdictions, charters may be renewed on the basis of reasonable or adequate progress toward meeting pre-defined goals, rather than the strict attainment of all goals. Where this is the case, charter school boards might choose to renew contracts with their education providers on the basis of a parallel standard – e.g.,

Of course, the charter school board is free to set higher requirements for the contractor's performance. In addition, it makes sense for the school's performance goals and evaluation criteria to be tied to the management agreement's provisions governing contract renewal and/or termination. But this cannot be done fairly unless those goals and criteria are articulated and mutually understood from the beginning of the partnership.

Charter school boards can hold their educational providers accountable for producing results only if all standards and expectations are articulated and agreed upon at the outset.

Performance evaluation is most objective and substantive when tied to attainment of clear, specific, measurable standards for student learning – standards arising directly from the state's charter law, charter contract, and/or detailed academic accountability agreement with the charter authorizer. Charter school boards can hold their educational providers accountable for producing results only if all standards and expectations – stemming from the school's own mission as well as state or district requirements – are articulated and agreed upon at the outset.

Like the school's own charter contract or accountability plan, the management agreement should articulate (or incorporate by reference) what students will be expected to know and be able to do at each grade level and to graduate from the school. These measures should include: (1) any standardized test measures that the school is required to use; (2) any other standardized assessment measures that the school might choose to use; and (3) any non-standardized measures of performance that the board and contractor mutually agree on. The latter two items are discussed further below.

What may happen if the school's critical learning objectives are not adequately articulated? Without being tied to clear standards and benchmarks for student performance, general aims and aspirations such as "high student achievement," "parent/student satisfaction," and "adherence to the school's vision" may be too vaguely conceived and subjective to allow a meaningful and fair assessment of a management company's effectiveness. A contract lacking clear performance measures gives the contractor too little guidance and the board little to enforce in the area of academic achievement.

Similarly, vagueness or ambiguity in the management agreement regarding the school's most vital goals may lead to disputes with the educational provider during the term of the charter, as the board and contractor may have reasonable but conflicting views of the contractor's performance. With performance goals and measures clearly defined at the outset, however, it is fair and appropriate for the management agreement to specify failure to produce (or make reasonable progress toward) the agreed-upon educational results as reasonable grounds for termination of the contract.

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boards might find it acceptable to renew contracts where the service provider has enabled the school to reach a performance standard judged acceptable for charter renewal, even if that standard is lower than initially outlined in the school's charter. Boards will likely need to consider other factors pertinent to their particular situations before deciding what role, if any, this type of relaxed standard might have in the contract renewal/termination provisions they negotiate with their education providers.

Be prepared to revise and refine the school's accountability agreements with both the authorizer and management organization. The goals stated in a school's charter application – or at the time a board first negotiates an agreement with an education provider – typically serve as good-faith statements of intention and expectation. In the real world, schools cannot set more realistic and precise goals until they know their student population and have assessed students' incoming achievement levels. Thus, where authorizers permit, it is common for charter schools to refine their accountability goals after conducting these baseline assessments. Boards should be prepared to engage in such post-enrollment "reality checks" supported by clear data; it is realistic to expect that the initial agreements negotiated with the authorizer and service provider will need to be reexamined.

Boards should be prepared to engage in post-enrollment "reality checks" supported by clear data.

Articulate the instruments and measures that will be used to assess student learning and hence, the management company's performance. These should include, but not be limited to, the particular national or statewide standardized assessments that will be used for these purposes. Clarifying which standardized test(s) will be used to assess student achievement is a straightforward matter that might nevertheless raise unexpected complications.

For example, a management company operating in multiple states might customarily use a particular standardized test that is aligned with the company's pre-defined learning standards and educational program. This test, however, might not be the same as the standardized assessments required by a particular state's charter legislation or by the specific authorizer. Accordingly, it makes sense to reiterate in the management agreement the particular standardized assessments each charter school is required – or simply prefers – to use.

Scenario: *Agreeing on Performance Evaluation Measures*

Chestnut Street Charter Academy has contracted with Skyrocket Learning Systems for comprehensive educational programming. By state law, Chestnut Street is required to administer two standardized tests, a national test and one developed by the state. The school's charter sets forth clear targets for student achievement on these tests, including measures of yearly growth.

Skyrocket Learning Systems agrees to administer these tests at Chestnut Street, while making clear that Skyrocket's preferred assessment is the national criterion-referenced A-Z Learning Index, which aims to measure higher-order skills. The company believes that the A-Z Learning Index is better-aligned to its curriculum and more meaningful than the assessment required in Chestnut Street's state. Thus, Chestnut Street's board permits Skyrocket to administer the A-Z Learning Index at the school, in addition to the other tests. The management agreement with Skyrocket states performance goals on the A-Z Learning Index, but Chestnut Street's authorizer does not agree to give this test significant weight in the school's charter agreement.

After two years of assessments, Chestnut Street students show satisfactory growth as measured by the A-Z Learning Index, but performance on the state-required assessments is poor. The board asks Skyrocket to modify its educational program to focus more on preparing students for the state-required assessments. Skyrocket is hesitant to do so, insisting that its approach provides a higher-quality program and will prove effective by various measures in the long run.

Educational service provider contracts should also explain what role, if any, the following types of measures may play in evaluating the contractor's effectiveness:

- ***Student learning gains.*** It is useful for accountability agreements to state performance measures in terms of individual student learning *gains* or growth over time, in addition to absolute performance levels. This is particularly important in schools serving significant numbers of students entering below grade level. Many schools develop both types of measures if their authorizers allow consideration of growth data. Where this is the case, the performance contract with an external provider should also state measures in such terms.
- ***Non-standardized or "alternative" measures of student learning.*** Many schools place a high priority on encouraging student achievement in areas that aren't readily measured by standardized assessments – for example, the arts, leadership, character development, communication skills, technology, service learning, etc. A charter board that values demonstrating growth in such areas should include such measures in its contract for educational services. Some providers have well-developed methods and tools for assessing student learning beyond standardized tests, so they can be particularly helpful on this front. Again, this is an area where the board must ensure a good fit between the provider's offerings and the school's mission.
- ***Other indicators of school performance.*** Some charter school boards may wish to evaluate a management company's performance partly by additional indicators beyond student learning, such as student attendance and motivation, suspension / expulsion /

graduation rates, parent and student satisfaction, parent and community engagement, school climate, staff satisfaction, etc. Other charter school boards may prefer to judge the management contractor's performance solely on the "bottom line" of student achievement. If a charter school board wishes to include supplemental indicators in the evaluation, it will need to decide (1) how to measure success in the desired areas and (2) how much weight they will carry in assessments of the management company's performance.

A charter board will need to decide (1) how to measure success in the desired areas, and (2) how much weight they will carry in assessments of the management company's performance.

One factor (not present in any of the contracts reviewed for this guide) that boards might wish to consider is *chartering agency satisfaction* – that is, the success of the service provider in maintaining a healthy and productive relationship with the school's charter authorizer. This would be useful to assess primarily in the case of comprehensive school management firms whose responsibilities include communicating and interacting regularly with the chartering agency. Of course, such an assessment would be valid and useful only where the chartering agency has no preexisting bias against charter schools or management firms. Charter boards may legitimately be interested in this question, as the management organization's track record in areas of concern to the public authorizer may ultimately affect the school's charter renewal decision.

Ensure that the service provider's program is fully aligned with the school's needs and requirements. Many charter school boards choose to contract for educational services precisely because they are not equipped to undertake the complex task of developing learning standards and assessments. Thus, they seek a school management or design organization's expertise, and there is no doubt that the pre-developed learning standards and assessments offered by such groups can be tremendously valuable to charter schools. At the same time, however, the "packaged" standards and assessments offered by a particular education provider might not align completely with all the goals of a given charter school.

Some boards or school founders may wish to augment a service provider's "package" with additional standards and assessments to give full life to their school's mission. Depending on their nature and offerings, not all education providers are equally willing and able to incorporate such supplemental standards and assessments in their performance-based contracts with individual schools. Augmentation of educational programs developed by a school management or design organization will require negotiation with the particular provider.

To ensure that a given educational contractor will be prepared to meet particular academic requirements for maintaining a school's charter – requirements both set forth in state law and negotiated with the school's authorizer – the board may wish to ask prospective contractors to demonstrate how their pre-established standards and assessments will meet these requirements. Because charter requirements vary greatly by jurisdiction and locality, boards or school founders should not assume that any particular company's educational program – however well-developed or widely implemented – will align automatically with the school's charter

requirements. Adjustments may be needed, and to create an effective partnership, both parties should understand at the outset any necessary or advisable modifications.

In establishing or double-checking the school's learning standards and assessments, charter school boards that do not have substantial educational expertise would benefit from consulting with educators who have successfully developed learning standards and aligned assessments. The box below suggests some resources that may help in this area.

Some Accountability Planning Resources for Charter Schools

- *Charter School Accountability Action Guide*, published by the Massachusetts Charter School Resource Center (2000), provides a six-step "recipe" for building a school-wide accountability system. Available at http://www.pioneerinstitute.org/csrc/accountability/acctguide.cfm or (617) 723-2277.
- *An Annotated Resource Guide for Shaping an Accountability Plan for Your Charter School*, produced by the Charter Friends National Network, builds upon a six-point framework for developing accountability plans. Available at http://www.charterfriends.org/performance.html or (651) 644-6115.
- *"Navigating Through the Standards Maze,"* Chapter 1 in *A Comprehensive, Practical Guide to Holding Charter Schools Accountable*, published by the Charter Schools Development Center. Available at http://www.cacharterschools.org or (916) 278-6069.
- *Measuring Up: How Chicago's Charter Schools Make Their Missions Count*, published by Leadership for Quality Education (2001), explains in practical terms how four schools have developed externally credible, valid and reliable performance measures *beyond standardized tests* to be given weight in their accountability agreements with the Chicago school district. Available at http://www.lqe.org and http://www.charterfriends.org or (312) 853-3696.
- A hot-linked *Directory of Standards and Assessment Resources*, compiled by the National Charter School Accountability Network and available at http://www.charterfriends.org/accountability/cfi-accountability7.html.
- Directories of accountability and assessment resources compiled by the U.S. Department of Education, available at http://www.uscharterschools.org/pub/uscs_docs/sd/menu.htm#accountability and http://www.uscharterschools.org/pub/uscs_docs/sd/menu.htm#assessment.

C. Other Matters to Address in Contracts for Educational Services

In addition to the accountability measures discussed above, contracts for educational services should also detail matters such as the following:

Oversight and evaluation methods, procedures, and timelines. How often, and in what ways, will the board review the management company's progress in meeting the school's educational

goals? Frequent reporting on academic progress – as opposed to solely administrative issues – will help, but may not be sufficient to judge a management company's overall effectiveness. How often will board members visit the school to evaluate the educational program and provider, and what will the board expect to see or do on such visits? How will the parties ensure that the board's visits and other evaluation efforts do not disrupt the school's functions or result in "micro-managing" the contractor? Will the board engage an external evaluator to assess, or help assess, the contractor's effectiveness?

Articulation of the board's oversight and evaluation methods is essential to a well-functioning relationship between the board and its educational contractor.

Articulation of the board's oversight and evaluation methods is essential to a well-functioning relationship between the board and its educational contractor, and will protect the interests of both parties. Clarity regarding how the board will monitor and evaluate the contractor's performance will ensure that: (1) the management company has the degree of freedom needed to implement its program effectively; (2) the board observes and understands the school's workings sufficiently to make fair, well-informed judgments regarding the contractor's performance; and (3) the board exercises its oversight and evaluation powers thoughtfully and legitimately.

Reporting requirements. How – and how often – will the management provider be required to report on student and school progress to the board? What information will the reports have to contain, and in what form must it be presented –e.g., written reports alone, or written reports accompanied by oral presentations at board meetings? The contract should set forth all reporting requirements and expectations, with particular attention to reporting on student achievement and progress toward meeting the school's educational goals and benchmarks.

Again, it will be necessary to distinguish educational from financial and other operational reporting. Most charter school boards expect frequent and regular reporting from their management companies on the gamut of school operations, including curriculum and program developments; student and parent activities and events; professional development activities; facilities management and finances. However, with the exception of financial reporting, many of the contracts examined for this guide only vaguely address reporting requirements, including the vital area of student growth and achievement. Thus, it is difficult to generalize about the range or frequency of reporting required by various boards.

On the matter of financial reporting, the contracts reviewed are fairly consistent: most charter school boards require financial reporting from their educational providers (including detailed revenue and expenditure statements, consistent with Generally Accepted Accounting Principles or other requirements of state law or the charter authorizer) at least quarterly, and in some cases, monthly.

The timing of all reports required by the management company is another important issue for boards to consider. For practical reasons, the educational provider's reporting cycle should be

one step ahead of the charter school board's own public reporting obligations. Most boards are required to report on the school's progress at least annually to their authorizer and/or the state. Accordingly, boards contracting with management firms should ensure that they receive sufficiently detailed information about the school's educational and operational performance in plenty of time for them to fulfill their own reporting responsibilities.

External evaluations. Charter school boards and/or management companies may seek an evaluation of the contractor's performance by an impartial, third-party evaluator. The value of an external evaluation may depend on the board's own capacity to monitor and make well-informed judgments about the school's progress.

External assessments may be particularly useful to boards that do not have significant educational expertise within their ranks, or boards whose oversight of the contract is light or inconsistent. Many management firms welcome and may even request external evaluations as an impartial judgment of their effectiveness.

If a charter school board contemplates or intends to seek an external evaluation, it is helpful for the contract to define the role and structure of the evaluation: Will it be the sole, official assessment on which to base the contract renewal decision, or will it simply be used to augment or verify the board's own findings? How will the external evaluator be chosen? Will the management company have the right to approve the selection of the evaluator? How will the evaluation be funded?

A description or outline of intervention procedures – along with the conditions that would trigger them – is useful to include in the management agreement.

Conditions, standards and procedures for board intervention. What may the charter school board do, short of terminating the contract, if it receives unsatisfactory progress reports or other evidence that the school is not making adequate progress toward its goals? A description or outline of intervention procedures – along with the conditions that would trigger them – is useful to include in the management agreement, because it will help ensure that: (1) the board is prepared to respond to signs of trouble promptly and in a well-planned manner that is foreseeable and agreed to in advance by the contractor; and (2) the board intervenes only when justified.

Most contracts reviewed in preparing this guide do not set forth intervention procedures, short of contract termination, that the charter school board might follow, nor do they discuss the conditions that could give rise to such action. Below, however, is an example of an intervention strategy outlined in one contract:

> "In the event [the contractor] fail[s] to (i) submit satisfactory Progress Reports; or (ii) satisfy performance standards as described in the attached exhibits as determined by [the board] in its reasonable discretion, [the board] shall give [the contractor] sixty (60) days notice of such failure. During such sixty (60) day period, [the board] staff or representatives will provide or arrange for technical assistance, as needed, to enable [the contractor] to cure such defaults. Furthermore, [the board] shall have the right, in its reasonable discretion, to engage consultants to evaluate and assist the School in meeting its goals and performance standards as set forth in

the Proposal and the attached Exhibits. [The contractor] shall use its best efforts to assist [the board] and its staff, advisors, evaluators and consultants in remedying the defaults in the School's Progress Reports and /or performance standards; provided, however, that in the event such defaults are not cured during such sixty (60) day period, [the board] shall have the right to terminate this Agreement without any further obligation or liability on the part of [the contractor]."

To provide some idea of the range of ways that charter school boards are working with management companies, this table summarizes the performance oversight and evaluation areas, methods, and timelines found in contracts with various school management organizations:[10]

Performance Oversight and Evaluation Provisions in Contracts

Firm	Areas of Evaluation	Methods and Tools	Timeline
A1	Parent/student satisfaction	Written survey rating school as "Excellent," "Good," "Fair," or "Poor"	Annual – first administered by the end of the school's 2nd year (by a mutually agreed-upon third party if the board and firm are unable to agree upon the evaluation mechanism)
A2	Educational program and its fulfillment of the "vision of the charter"	Ongoing external evaluation by mutually chosen evaluator (person or organization); at least 4 visits to school each year, after 2nd year of operation	Evaluator appointed by end of school's 2nd year. Within 2 months, evaluator must submit an interim letter reporting on the school's educational program to the board and the firm. Evaluation continues each year, with annual reports. The letter and subsequent reports rate the school as "Excellent," "Good," "Fair," or "Poor," setting forth findings to support the rating
B1	Educational performance and progress*	Progress reports	Provided at each regular meeting of the charter school board
B2	Same as B1	Progress reports	Provided to the board twice a year, and more frequently upon reasonable request
C	Parent satisfaction	Written survey administered by the board, rating the school as "Excellent," "Good," "Satisfactory," "Poor," or "Unacceptable"	Annual
D1	Academic and educational standing of students	Progress reports	"Periodic" (undefined in contract)
D2	Progress in attaining pre-defined student outcomes	Report	Annual
D3	Same as D2	Visits by board to observe educational processes, review data, and confer with staff	Reasonable opportunity, as determined by mutual agreement
D4	Same as D2	Independent evaluation(s)	Unspecified
E	Progress in meeting academic goals	Public report/assessment	Annual
F	Program effectiveness	Site visits; observations; interviews; questionnaires to parents, students, and staff	Unscheduled – as desired by board

* *in accordance with the criteria and assessments set forth in the charter application*

[10] Each letter represents a different management organization. Identical letters followed by numbers represent the same firm but indicate contracts with different schools.

Because of the complex and continuously evolving nature of educational improvement, it is conceivable that either party to a school management agreement may propose modification, clarification, or augmentation of particular student performance goals and/or assessment methods once the school is operating. Thus, it would be helpful for the contract to recognize this possibility and set forth a procedure to address potential changes to the educational program that may be proposed after the contract is executed. Depending on their significance, such changes may also require the approval of the school's charter authorizer.

VI. COMPENSATION AND FINANCES

How much will the management company be paid for its services? What will be the role of the board in overseeing the school's financial affairs? What will happen if the school runs a deficit? These issues are among the many financial concerns that management contracts must address.

To create clarity in financial affairs, management contracts need to address at least these six central issues:

- **Allocation**: What funds will be available to the management company for the operation of the school?
- **Budget**: Through what process will the board adopt an annual budget for use of the allocation?
- **Compensation**: What payments will the management company earn?
- **Deficits and Surpluses**: What happens if expenses exceed revenues or vice versa?
- **Oversight**: How will the board oversee the school's financial health?
- **Debts**: How will any debts owed by the board to the management company be repaid?

Many financial issues—including how the board oversees the service provider's use of funds, how the service provider is compensated, and the terms under which any ancillary services are offered—may have implications for the school's tax status under the Internal Revenue Code. With the exception of compensation arrangements, however, these implications will not be discussed here because they are covered extensively in the section on "Federal Tax Exemption and Contracting for Management Services," beginning on page 18.

A. Allocation

A charter school management contract needs to specify clearly what funds will be available to the management company for the operation of the school. Contracts lie along a continuum on this issue. At one end of the continuum, some contracts state that literally all funds flowing to the school—the public funds to which the school is entitled as well as any private or public funds garnered by fundraising—become available to the management company. At the other end of the continuum, some contracts make as little as 75% of the total available to the management company—the charter school board retains the rest for carrying out its responsibilities, including staffing for the board.

A charter school management contract needs to specify clearly what funds will be available to the management company for the operation of the school.

The allocation that makes the most sense for a particular school will depend upon the division of roles and responsibilities between the board and the management company, discussed

earlier. Boards that retain a large fraction of the school's revenue for their own use typically assume some major responsibilities that entail direct costs. For example, one charter school board takes care of all debt retirement and lease payments for the school, requiring it to withhold more than $1 million per year in revenues. Another covers the cost of the school's audit, a much more modest expense. To create a sensible allocation policy, boards and companies first need to make clear which expenses each party will incur.

But what about charter boards with more modest expenses? Charter boards that contract with management companies typically face three kinds of residual expenses: (1) administrative expenses arising from the functions of the board (for example, the costs of staffing, meetings and correspondence); (2) expenses related to the evaluation of the management company's effectiveness; and (3) the costs of legal representation for the board. Charter boards can handle these expenses in one of two ways:

- by specifying in the contract that some dollar amount or percentage of funds will be retained by the charter board for these purposes, or
- by using the budgeting process (outlined below) to ensure that funds are available for these board functions.

Scenario: *Lack of Funds for the Board's Business*

The contract between the board of Chestnut Street Charter Academy and Skyrocket Learning Systems stipulates that each year, the board may conduct an independent evaluation of the company's performance. In the fall of the school's third year, the board issues a Request For Proposals to area researchers, interviews prospective evaluators, and selects Outcomes Unlimited to perform a $35,000 study of the school's performance.

When Outcomes Unlimited presents its first invoice to the school's business director, however, Skyrocket refuses to pay. Though the contract allows for an evaluation, Skyrocket says, the board must assume the costs of such a study. The school's budget — approved by the board — contains no funds for the evaluation.

B. Budget

Most management contracts require the management company to submit an annual proposed budget for the upcoming school year. The board reviews the budget, works out any needed changes with the management company and formally adopts it.

Contracts typically specify a timeline on which the budgeting process should take place. It is important that this timeline mesh with timelines imposed by the charter authorizer or other authorities, and that it address milestones such as:

- a date by which the management company must submit the proposed budget;
- a date by which the board must indicate any problems it sees with the budget;

- a date by which the management company must submit a revised budget;
- a date by which the board must approve a final version.

Though specifying a formal budget adoption process is vital, management company officials and board members alike emphasize the need for less formal negotiation around and revisiting of the budget. Budgets are critical to both parties. The budget is one of the most important tools in the board's toolbox, through which it sets basic policies that govern the school's operation. The budget drives many key aspects of the school's management, including class sizes, staff compensation, instructional resources available to students, and the quality of services like food and transportation.

From the management company's perspective, the budget sets the parameters within which the company will have to work day in and day out to manage the school. The company's financial security hinges on the viability of the budget. For these reasons, it is essential that the board and the company leave the budget approval process with a plan that makes sense from all sides.

A key value in budgeting is transparency: the board, the management company, the school director and arguably other stakeholders need to understand fully both the budgeting process and the actual numbers that make up the budget. This transparency should extend beyond the budget-setting process as well—all parties need access to up-to-date information about the status of the budget as the year moves forward.

***Scenario:** Lack of Clarity about Budget Assumptions*

Each year, the board of Bright Tomorrow Charter School reviews and approves a budget submitted by Everest Education Management. The budget is not very detailed, showing line items in broad categories such as "Personnel" and "Facility" with little explanation.

A couple of months into one school year, the board begins to receive complaints from parents that the classes at Bright Tomorrow are too large, with as many as 32 children in one third-grade classroom. Since small, intimate classes were part of the board's founding vision, members are alarmed at the news. Confronted with the issue, Everest suggests that budgetary realities make the large classes necessary. When the board asks for a detailed analysis, the numbers indeed show that balancing the budget would be nearly impossible with significantly smaller classes. Everest offers a plan for reducing class sizes the following year by trimming other programs and expenses, but it's too late this year to make those changes.

C. Compensation

One issue the contract must address is how to determine the management company's compensation. The management agreements studied for this guide include numerous mechanisms, outlined in the following box.

Various Ways to Compensate Service Providers

- ***Surplus.*** Some contracts simply allow the management company to retain any annual surplus as profit.
- ***Percentage of revenues.*** Most of the contracts provide the management company with a percentage of the school's revenues. Though the percentages in these contracts range from 7% to 22%, these numbers are derived in highly variable ways and thus may not be good rules of thumb for any particular school. In several cases, management companies have the opportunity to earn greater compensation through two mechanisms:
  - *Surplus.* One contract allows the management company to retain any budget surplus in addition to claiming percentage-based fees.
  - *Bonus.* Other contracts award the management company an additional 2.5%-3.5% of revenues if it meets performance targets related to student achievement, parent satisfaction, enrollment, or a third-party evaluation of the school's overall success.
- ***Fees budgeted annually.*** Some contracts do not specify the management company's compensation. Instead, the board and management company negotiate compensation annually through the budget process.
- ***Flat fee.*** Though no reviewed contracts use this device, another possibility is to pay a flat dollar amount for service.
- ***Fees for specific services.*** In the case of providers offering specific, rather than comprehensive, services, contracts may include precise fees for particular services purchased.

Following are some important considerations to keep in mind when negotiating a compensation agreement:

- **Consider the incentives inherent in different arrangements**. Management companies face a wide range of performance incentives in carrying out charter school contracts. For example, they may want to show good results and have satisfied customers so they can build more business over time. Incentives built into the contract are just one set of motivations for management companies. Still, it is worth considering the incentives that different arrangements create.

  Providing a percentage of revenues creates an incentive to bring in more dollars. This motivation could translate into a drive for higher enrollment; if so, make sure that's what the board wants as well. The surplus method creates an incentive to cut costs; make sure the board has mechanisms in place (through budgeting, oversight, and key policies) to ensure that cost-cutting does not compromise or diminish the achievement of the school's goals. Some contracts reviewed for this guide specify parameters for class sizes, computer capacity, and insurance coverage to ensure that the management company does not skimp on certain important expenditures. One contract provides a formula for calculating the "maximum annual profit" that the management contractor

may earn from operating the school. Bonus schemes create their own unique incentives; work hard to align these with the school's mission.

Certain incentive structures make more sense in particular contexts. For example, if the management company's school program is highly structured and very clear at the outset, surpluses are most likely to come from operating efficiencies rather than by cutting corners on programmatic needs. In this case, a board might be more comfortable with a surplus arrangement than it would be when working with a less well-defined program.

***Scenario:** Pressures to Boost Enrollment*

Rainbow Charter School's contract with Everest Education Management provides 21% of the school's revenues to Everest each year. When enrollment for the year exceeds the target by 100 students, board members become worried that the school will lose its small-school culture. They accuse Everest of over-enrolling to boost fees.

- **Carefully define revenues**. Whether the school is providing the company with a percentage of revenues or with any budget surplus, defining what counts as "revenue" is critical. Among the questions that should be considered are:
  - Does "revenue" entail all funds received by the school, including grants received from private donors or competitive public programs? Including all funds can be expected to enlist the help of the management company in fundraising (which requires clear definition of the respective fundraising responsibilities of the board and contractor, as discussed in the chapter on "Roles and Responsibilities"). But in surplus arrangements, grants that come in unexpectedly may simply end up as a windfall to the management company unless the budget is adjusted. Schools concerned with 501(c)(3) federal tax exemption should be aware of the risks that such arrangements pose to tax-exempt status, discussed below.
  - Does "revenue" include such things as receipts from school lunch sales or athletic events, fees charged for before- and after-school programs, and other ancillary revenues?

***Scenario:** Problems with Revenue Definition*

Rainbow Charter School receives a $1 million grant from an anonymous donor. Rainbow's management contractor, Everest Education Management, argues that it should receive 21% of the funds, since their management agreement gives it 21% of "all school revenues."

- **Clarify all services and resources the contractor will deliver, and know their market cost**. As noted earlier, trying to compare compensation arrangements proposed by various management organizations is often like comparing apples and oranges – the packages may be based on different definitions of revenues or provide differing types and levels of services. Even given such variability, though, charter boards can make

well-informed and wise choices by ensuring that (1) they understand and desire the specific services and resources promised under any management organization's proposed fee structure; and (2) the proposed fee for all included services and resources is market-rate.

- **Specify a payment schedule**. When does the management company draw its fees? Monthly? Quarterly? At year-end?
- **Watch terminology**. In most contracts studied for this guide, the contractor's compensation is called a "management fee." In one case, half of the fee is called a "management fee"; the other half a "licensing fee" for the use of the company's instructional program and materials. Boards confronted with licensing or similar fees might ask for clarification of what the school receives in return.
- **Deal appropriately with restricted funds**. Keep in mind the restrictions attached to funds from some sources that may prohibit certain kinds of compensation arrangements (see box below).

Dealing with Restricted Funds

Management contracts that guarantee the management company a percentage of all revenues may run into problems if funding sources, whether public or private, prohibit a grantee from transferring a percentage of a grant to a third party in this automatic fashion. In that event, a charter board has several options including:

- Administering those grant funds itself, for example by incurring expenses directly rather than having the management company do so; or
- Contracting separately with the management company to administer the funds through a mechanism that is acceptable to the funder.

For the board's protection, it is important to state in the contract that such restricted grants are exempted from the management-fee provisions of the contract.

- **Probe legal issues related to 501(c)(3) status**. Certain kinds of fee arrangements may call into question a charter school's eligibility for status as a charitable organization exempt from federal taxation and for federal charter school start-up grants. Charter boards that appear to be mere pass-throughs to for-profit companies may find it difficult to obtain or maintain 501(c)(3) status or federal charter school start-up grants.[11]

[11] Charter schools entering into contracts with for-profit companies for day-to-day school management "must be held by the State and the cognizant chartering authority to the same standards of public accountability and requirements that apply to all public charter schools, including State student performance standards and assessments that apply to all public schools; and the charter school must supervise the administration of the PCSP grant and is directly responsible for ensuring that grant funds are used in accordance with statutory and regulatory requirements." Statement of Non-regulatory Guidance, Public Charter Schools Program, U.S. Department of Education, Office of Elementary and Secondary Education (March 1999).

Of course, different state laws require different corporate forms for charter schools. Some establish charter schools as public corporations rather than nonprofits; these organizations are exempt from federal taxation without necessarily having 501(c)(3) status. All else being equal, charter schools in these states have more flexibility with regard to their relationships with for-profit management companies.

But for schools that have or are seeking 501(c)(3) status, boards should consult IRS guidance on this topic. See the box on "Compensation Arrangements and 501(c)(3) status" for more information.

Note: This non-regulatory guidance applies only to charter schools receiving federal start-up grants under the Public Charter Schools Program (PCSP). It addresses questions the Department has received regarding various provisions of the PCSP statute, including the involvement of for-profit organizations in charter schools. These guidelines do not contain all of the information charter schools will need to comply with PCSP requirements, but are intended merely to provide guidance on the PCSP and on examples of ways to use it. For additional information about this federal grant program, see the U.S. Department of Education's charter schools website, http://www.uscharterschools.org, or contact the PCSP Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3E122, Washington, D.C. 20202-6140. Telephone (202) 260-2671.

Compensation Arrangements and 501(c)(3) Status

As described in the earlier section on "Federal Tax Exemption and Contracting for Management Services," charter schools seeking tax-exempt status under section 501(c)(3) of the Internal Revenue Code must be mindful of the ways in which contracts with management organizations can affect the IRS's determination. Compensation arrangements are likely to face particular scrutiny since they could well be the source of benefits that are impermissible for nonprofits to confer on private parties. Compensation structures that grant the management company the school's annual operating surplus, give the contractor a percentage of *all* school revenues, or include certain types of bonuses or other incentives are especially likely to trigger heightened review by the Internal Revenue Service.

Charter boards should be sure to have an attorney familiar with nonprofit taxation counsel them on structuring an acceptable compensation plan. In general, though, here are some characteristics of compensation plans that make them more likely to pass IRS muster:

1. The compensation plan is the result of a completely arm's-length contractual relationship overseen by an independent board of directors, and the contractor does not participate in the management or control of the school in a manner that affects the compensation arrangement.
2. Prices and operating costs are reasonable, market-rate, and commensurate with the services provided.
3. A ceiling or reasonable maximum is in place to avoid awarding windfall gains to the contractor.
4. The compensation plan serves a discernible business purpose of the school (e.g., achieving maximum efficiency and economy in operations) and furthers the school's educational success, independent of any benefit to the service provider.
5. The plan does not demonstrate the potential to reduce the services the school would otherwise provide (e.g., a certain percentage of the school's net revenues is reserved for expanding or improving educational services).
6. The contractor's compensation is not dependent principally upon the school's incoming revenue but upon accomplishment of the objectives of the compensatory contract (e.g., success in keeping actual expenses within budgeted amounts).
7. The compensation plan does not transform the principal activity of the organization into a joint venture between the organization and the contractor.
8. The compensation plan is not merely a device to distribute all or a portion of the school's net revenues to persons controlling the school.
9. The compensation plan rewards the contractor only for services actually performed.

The IRS evaluates school applications for tax exemption on a case-by-case basis, taking into consideration all relevant facts and circumstances. A useful rule of thumb is that compensation should be reasonable, market-rate, commensurate with the services provided, and the result of arm's-length bargaining by an independent board of directors.

D. Deficits and Surpluses

What happens if expenses end up exceeding revenues? Or vice versa? Contracts should make clear what happens in these instances. Following are some ways in which a sampling of contracts handle deficits and surpluses:

- **Deficits**: Most contracts reviewed for this guide require the management company to fund any operating deficit. In some contracts, the company can make up its loss by retaining a surplus in the next year or two, though generally not beyond that point. Some contracts allow the company to terminate the contract prematurely in the event of two successive annual deficits. Other contracts differentiate between causes of deficits, for example, by holding the board liable for deficits caused by enrollment shortfalls and the company liable for excessive spending.
- **Surpluses**: As noted above, some contracts allow the management company to take any surplus as profit. Others specify that surpluses shall revert to the board or be used by the management company for school-related purposes. Others are silent on surpluses. But it is essential for management contracts to address the possibility of both deficits and surpluses in some way.

  Many charter boards that run a surplus seek to build up a reserve fund over time. Such a fund can make it easier to finance a new facility, or can simply provide a cushion for a period of financial hardship. Charter boards can discuss with their management companies ways of building up such a reserve while still compensating the management company adequately for its services.

Contracts should make clear what happens if expenses end up exceeding revenues or vice versa.

Since different accounting methods can result in vastly different calculations of surpluses and deficits, it is important to specify, in the contract or related documents, what calculation methods will be used. For example, one contract specifies that deficits will be determined on an accrual basis consistent with Generally Accepted Accounting Principles.

E. Financial Oversight

The board's role in money matters does not end with the approval of an annual budget. Boards need effective ways to oversee financial affairs in the school. Contracts studied for this guide contain provisions designed to ensure that boards are sufficiently involved on an ongoing basis. Issues not addressed in contracts should be dealt with in the board's fiscal policies.

- **Processes for amending budgets**. Since budgets rarely project the year ahead with complete accuracy, it is important to have provisions in place for budgetary changes. To smooth the management process, most contracts allow some degree of change to take place without board review. But most contracts also specify some threshold above which the management company must seek board approval for the change.

For example, one contract requires board approval for changes within a major budget category amounting to more than 10% of the category's total budget. One additional note: if the management company's compensation is handled as a budget line item rather than a contractual provision, it is especially important to address changes in that line item explicitly.

- **Mechanisms for board review of certain expenditures and contracts**. Once the budget is set, the management company is generally free to operate the school with relative autonomy. But there may be certain kinds of financial decisions the board will insist on reviewing. As described in the chapter on "Roles and Responsibilities," these reviews often concern major subcontracts into which the management organization seeks to enter.
- **Reporting by the management company to the board**. The board (or an officer or committee of the board) should also review periodic reports from the company on the school's financial status. See the box below for some examples.

Reports Required by One Sample Management Contract:

- unaudited financial statements (within 30 days of the end of each quarter);
- audited annual financial statements (within 120 days of the end of each fiscal year);
- monthly and year-to-date budget variance reports, balance sheets, and cash flow statements (within 30 days of the end of each month);
- monthly written reports on the charter school's overall progress (within 30 days of the end of each month).

- **Audit procedures**. Obtaining audits of school finances is an important part of board oversight (and quite often a requirement of state law). As the entity ultimately responsible for the school's fiscal health, the board — rather than the management organization — should select, hire, and oversee the auditor.

F. Debts

***Scenario:** Lack of Clarity about Repayment of Investments*

Under its five-year management agreement with Summit Academy, Skyrocket Learning Systems provides needed start-up and capital improvement funds to Summit, supplementing the school's per-pupil revenues on an as-needed basis. Significant funds have gone toward renovating a facility that Summit leases from a social service agency. After three years, Skyrocket has invested over a million dollars in the Academy, but Summit decides to terminate its contract with Skyrocket. Skyrocket demands repayment within one year of the start-up and capital funds it has provided Summit, at an interest rate far higher than Summit's board ever expected. The contract between Skyrocket and Summit says nothing about the terms of repayment.

In many cases, management companies provide some kind of up-front funding for a charter school before the school's revenues begin to flow in. This funding may come as a formal loan. Or the management company may simply incur certain out-of-pocket expenses in conjunction with the opening of the school for which it expects to be repaid over time. Alternatively, management companies may guarantee financing obtained by the board.

Many of the contracts reviewed for this guide contained no clear terms surrounding these up-front investments. Lack of clarity on this point, however, has led to serious problems in several charter schools — especially those whose boards have chosen to terminate agreements with management companies. In the case of termination, is the board obligated to repay the company for its investments? Or were those investments part of the risk taken by the management company in its business venture? If the board must repay debts, under what terms (interest rate, timeframe) must it do so? If the company has provided a guarantee for financing received by the board, may the company revoke the guarantee upon termination? Leaving these questions unanswered until a termination occurs is a recipe for confusion.

Management agreements reviewed for this guide contain three kinds of provisions related to such funding:

- **Escrow provisions to ensure start-up investments are made**. One contract requires the management company to place a certain amount of funds in an escrow account, out of which the school's start-up costs will be paid. This provision ensures that the promised investments take place. Ideally, the board would also adopt a budget for such expenses, much as it adopts a budget for annual expenses.
- **Explicit terms regarding repayment**. For any funds that the management company expects the board to repay, the parties should execute an explicit agreement setting forth the terms of such repayment. The agreement should specify the timetable on which the board must repay the debt and the interest rate the board must pay for the use of the funds. For maximum clarity and flexibility, this agreement should be separate from (and referenced in) the management agreement.

- **Explicit terms related to termination**. This separate agreement should contain specific provisions for what will happen in the event the board or the management company elects to terminate the agreement. One possibility is for the repayment of debt to be completely separate from the management contract. Under this scenario, the board continues to make payments to the company just as it would if the management contract remained in force. Such an agreement should include a provision that sets forth the terms under which the board can "pre-pay" the debt, paying off its remaining obligations in a lump sum.

  Both parties need to understand what debts have been incurred and how repayment will occur.

  Another possibility is to have the terms of repayment change upon termination of the management contract. For example, one contract requires the board to repay any outstanding debt to the company and release the company from any loan guarantees within a year of termination. A board should scrutinize such provisions carefully, since they may make it difficult for the board to exercise its right to terminate the management contract. If the board agrees to such provisions, it should ensure that they clearly spell out the conditions of repayment.

Overarching all of these specific provisions is the importance of transparency: both parties need to understand what debts have been incurred and how repayment will occur.

VII. PROPERTY

When a charter board and a service provider work together in the implementation of a charter school, they put into use several kinds of property — both intellectual and physical. Management contracts need to make clear who owns various kinds of assets, the conditions under which the parties may use this property and what happens to property in the event the contract is terminated.

A. Intellectual Property

***Scenario**: Property Rights upon Termination*

Roseville Academy of the Arts has a five-year contract with Star Educational Pathways to provide an arts-focused K-12 program and comprehensive school management. The program is popular in the community for providing an educational opportunity that didn't previously exist in the district. The management company owns the school's state-of-the-art facility, which it bought and renovated specifically for Roseville and now leases to the school. Tailor-made for Roseville's arts programs, the campus is also far superior to any other educational facility in the region.

In the school's third year, Roseville's board continues to approve of many elements of the arts program offered by Star; however, they have numerous criticisms of Star's management style. In addition, the board has come to believe that Star's fee for management services is too high. The board is considering not renewing Star's contract when it expires, believing that they can continue a strong arts program on their own and can purchase back-office services more economically from other providers. Upon hearing this, Star Educational Pathways informs Roseville's board that the entire arts program currently offered at Roseville is proprietary to Star, and Roseville may not continue implementing any of its elements without a contract or licensing agreement with Star.

Roseville's board disagrees. They argue that since its inception at Roseville, the arts program has been significantly augmented and strengthened by several visionary teachers - who, though recruited and managed by Star, are employees of Roseville's board and are willing to stay at the school with or without Star. The board maintains that these teachers have partial ownership rights over the arts program, and that the school need not have a contract with Star to continue curricular features that they themselves developed. The company rejects this view and further informs the board that the school's lease is contingent on continuing its contract with Star.

"Intellectual property" is the legal term for all the concepts, methods, materials, software, and other idea-based assets associated with an enterprise like a school. Owners of intellectual property may understandably be concerned about maintaining the right to benefit financially from the use of the ideas in the future, to control the use of the ideas in other settings, and to guard closely certain aspects of their intellectual property. Contract provisions need to safeguard these rights in a way that makes sense for the school and accords with state laws about the public nature of information in charter schools.

Most management agreements studied for this guide make a distinction between two types of intellectual property: (1) ideas developed prior to the execution of the contract, and (2) ideas developed while implementing the contract.

Property developed prior to the contract. Most of the contracts reviewed state clearly that any intellectual property developed prior to the management relationship will remain the property of the original owners during and beyond the term of the contract. For example, if either a board or a management company comes to the relationship with a pre-developed educational program that will be used in the school, all of the concepts, materials, and the like associated with that program remain the property of that party.

Charter boards should be careful not to obligate themselves in a contract to keep secret ideas that they will be required under the law to disclose.

Often, contracts bestow non-owners of the property with a "non-exclusive, non-assignable license" to use the property within the school during the contract term. By "non-exclusive," these contracts mean that the party granting the license (e.g., the management company) is free to grant a similar license to others, perhaps other schools. By "non-assignable," the contracts make clear that the property is only to be used directly by the license-holders—they are not free to license others to use the ideas outside of the school itself. In some contracts, this license continues even if the contract expires or is terminated. One agreement allows the school to continue using the company's copyrighted program for the remainder of its charter term even if the school and company are no longer working together. Another grants the school a license to use the company's program indefinitely.

For charter boards, three caveats are in order regarding this kind of property:

- **Consider the value the school's mission may place on public disclosure and idea-sharing**. For some charter schools, a central part of the school mission is to share lessons learned with other schools. If such sharing is part of a school's mission, the board may want to rethink any non-disclosure provisions that may be proposed for the contract.
- **Take into account legal issues around public information**. Since charter schools are public schools, they may face obligations under the law to make their school programs a matter of public record. Charter applications, for example, are generally considered public documents. Board meetings are usually subject to open meeting laws. School records and reports submitted to authorizers may be open to review by the public. And many charter laws contain explicit language encouraging the ideas generated in charter schools to be shared with other public schools.

  For all of these reasons, it may be impossible to prevent completely the disclosure of intellectual property associated with the school. Charter boards should be careful not to obligate themselves in a contract to keep secret ideas that they will be required under the law to disclose. The agreements reviewed for this guide address this issue in different ways, exemplified in the box on the next page.

Contract Provisions Regarding Public Information

The blanket provision. One contract simply states that none of its provisions regarding intellectual property can require the board to violate any laws regarding the disclosure of public information: "Nothing herein contained shall be construed in a manner that would cause [the charter board] to act or fail to act in a manner that would cause [the charter board] to be in violation of any state open records law."

Specific provisions for sharing. Another contract explicitly states that the management company will grant a royalty-free license for use of its intellectual property to the school district within which the charter school is located.

- **Consider all sources of property**. Many contracts protect only intellectual property owned by the management company. In some cases, the charter board may itself bring certain kinds of intellectual property to the contract. For example, if the charter board has operated a school for a few years and only then contracted with a management company, some of the pre-existing programs of the school may be intellectual property of the charter board. Or the charter board may have additional intellectual property if it operates other programs (e.g., after-school programs) that will become part of the new school.

  In addition, individuals who work at the school, such as teachers, may bring programs, materials and ideas of their own to the new enterprise. Whether a charter board wants to protect its rights in these assets or the rights of employees in theirs is a decision for the board to make, within the legal constraints discussed above.

  As noted above, some boards are eager to have their ideas shared widely without their permission. Such boards might be happy for the management company to use property beyond the contract term. However, if the board wants the property to remain accessible to the public, it is important to structure the contract so that the property does not fall under the ownership and control of by the management company, which might then want to restrict access in the future.

Property developed while implementing the contract. With regard to disclosure, the same issues arise in the case of property developed after the management relationship is established. These concerns may be heightened, in fact, since this kind of intellectual property is likely developed at least in part with public funds. Some state laws dictate that intellectual property developed with public dollars become part of the public domain or owned by the state. Such factors make this another area where charter schools should seek specialized guidance.

The contracts reviewed for this guide treat this kind of intellectual property in the following ways:

- **Management company ownership**. The vast majority of contracts simply grant ownership of all intellectual property developed at the school to the management company. The board and individuals associated with the school are prohibited from using or disclosing the property outside of the contract.

- **Joint ownership**. Some management agreements specify that the contractor and the charter board jointly own particular types of intellectual property developed at the school. For example, one contract provides:

  "[A]ny educational product or service developed exclusively by any employee of the Board during the term of this Agreement shall be the joint property of the School, the employee and [the management company], and profits from the sale or licensing of that product or service shall be shared in by the School, the employee and [the management company] on the basis of one-third of such profits to [each party]."

- **Company ownership with license to the board**. Some contracts grant ownership of this type of intellectual property to the management firm, while allowing the board to use it for its own purposes. For instance, one management agreement states:

  "[I]f new teaching techniques or methods, or significant revisions to known teaching techniques or methods, are developed or used in [the school], [the management firm] shall report those to [the charter school board], and [the board] may make them available to the public free-of-charge . . . "

  Another contract grants ownership to the management company while providing the board a license to use the property royalty-free in perpetuity. That is, even if the contract is terminated, the school may continue to use jointly developed ideas in the future.

In addition, one contract specifically addresses the question of *lesson plans* developed by teachers for their own use, stating that nothing in the agreement's provisions on intellectual property "shall be construed to prevent a teacher from using lesson plans or other instructional materials s/he has developed for his or her own use. . . . regardless of the expiration or termination of the Agreement."

Every board may approach this question in a different way, depending upon the involvement it expects to have in the development of the school's program, the amount of new intellectual property it expects will be developed at the school, state laws that may apply, and other factors. For boards that expect to employ a management company's program whole-cloth with little modification, securing the right to use jointly developed property may be less important than for boards that aim to develop significant modifications or new ideas and material during the contract.

B. Physical Property

As with intellectual property, facilities, equipment and materials acquired during the term of the contract present important issues of ownership. If the management organization purchases new computers and furniture for the school, for example, who owns them? What happens to them in the event the contract is terminated?

Intellectual property, facilities, equipment and materials acquired during the term of the contract present important issues of ownership.

It may seem common sense that any physical property obtained with the school's funds would be owned by the charter school, remaining in its possession irrespective of the status of a management contract. In fact, only a few of the contracts reviewed for this guide follow this approach.

Contracts need to clarify the issue of who owns start-up property.

By contrast, many of the contracts state that the school's physical assets belong to the management company. Some give the charter board the chance to buy the property back at its current value (purchase price minus depreciation), but still make it clear that the management company owns the assets, even though they were purchased with school funds. Charter boards are well advised to craft these provisions carefully. Here is an example of a board buy-back provision from one contract:

> "Disposition of Fixed Assets Upon Termination. Upon expiration or termination of the Agreement for any reason, the [charter board] shall have the right, subject to any limitations and/or conditions in loan or lease agreements to which [the management organization] is a party, to acquire all, but less than all, of the property and equipment provided by [the management organization] . . . (provided, that notwithstanding the foregoing, the [charter board] may purchase a portion of such property and equipment (which portion it may select in its sole discretion) in the event [the charter board] terminates the Agreement for cause. If [the charter board] exercises such right, it shall pay to [the management organization] the 'net depreciated value' of such property and equipment as it elects to purchase within thirty (30) days after the effective date of termination of the Agreement."

It's also possible for important physical assets, such as equipment, vehicles, and facilities, to belong to neither party, but instead to be leased by one of the parties from the property's owner. If the management company holds the lease, the board may want to take steps to ensure that in the event the contract is terminated, the school can assume the lease. One contract reviewed for this guide, for example, requires the management company to attempt to enter into leases that can be assumed by the board in the event of termination.

***Scenario:** Division of Assets Upon Termination*

North River Academy and Skyrocket Learning Systems have a two-year management agreement. During the Academy's start-up period, Skyrocket purchased furniture and equipment for the school, using funds transferred to Skyrocket for managing the school.

At the end of the contract term, North River decides not to renew the contract. Skyrocket accepts the non-renewal but claims ownership of the furniture and equipment it purchased.

A special situation arises when the management company purchases start-up physical property on behalf of the school in advance of the school's receipt of funding. For example, to make sure school starts smoothly, a management company might agree to purchase furniture, buses, materials and computer equipment even before per-pupil funds begin to flow to the school. In essence, the management company is issuing a loan to the charter board for the purchase of needed assets. Some management contracts accordingly contain provisions for the repayment

of these debts (see the discussion of "Debts" in the "Compensation and Finances" chapter on page 66).

Who owns this property? Contracts need to clarify this issue, though the ones studied for this guide do not. Under one approach, the board owns the facility, and the management company's financing is extended as an actual loan to the charter board, with the assets to be purchased serving as collateral. In the event of premature termination of the contract, the charter board would still be obligated to repay the debt. If it does not, the management company may foreclose and repossess the assets purchased on behalf of the school.

Once the charter board has repaid the debt in full, however, the management company's security interest in the assets would be terminated. Alternatively, the management company may own the property until the debt is repaid. Under this arrangement, the board should ensure there is a clear way to account for the partial payments made by the charter board over time in the event of premature termination of the contract. This clear accounting should be set forth in a separate, explicit financing agreement.

Finally, special issues may arise where the management company (or an affiliate) owns the facility in which the charter school operates and is leasing the space to the charter board, or where the board has borrowed significant funding from the company to buy or renovate a facility. These loan or lease agreements may be contingent on the management company's continued operation of the charter school.

Many charter schools find such arrangements to be advantageous, given the extraordinary difficulty of finding and affording a suitable facility. Boards should consider, however, the position in which such deals may place the school. Might they make it virtually impossible for the board to terminate the agreement with the management company, since doing so would effectively close the school by turning it out of its facility? If so, boards need to weigh the tradeoffs carefully.

***Scenario**: Competitive Financing Terms / Ensuring "Best Value" Contracting.*

The building in which Esperanza Charter School will reside needs substantial renovations in order to meet code and fulfill the school's needs. Lighthouse Education Centers agrees to finance the renovations, with the funds repaid over the next ten years by the school. The board, however, believes it could obtain financing on more favorable terms from a local bank. Lighthouse insists that its facilities services — including the financing arrangement — are part of the package it offers schools and must be part of the management contract.

Fortunately, many alternative arrangements are available to boards. For example, several contracts reviewed for this publication make clear that the board is responsible for acquiring the facility and making capital improvements, while the company is responsible for maintenance and operations. At the same time, this arrangement has its own drawbacks,

requiring the board to take on risks and duties that would otherwise fall to the management company.

To achieve clarity with regard to facilities, boards and management companies should ensure they agree on the following questions:

- **Ownership**: Who will own the facility? The management company? The school? A corporation affiliated with the school? Another party entirely? In the case of third-party ownership, who is leasing the facility — the company or the school?
- **Maintenance**: Who will pay for the routine maintenance and operation of the facility? Who will oversee or manage these responsibilities?
- **Improvements**: Who will pay for major capital improvements to the facility? Who will decide what improvements to make, and when to make them? Who will oversee and manage these improvements?
- **Financing**: Who will finance the purchase of a facility and/or capital improvements? Will the company provide this financing? If so, under what terms? Will the school seek outside financing? If so, who will incur the debt — the board or the company? Will the company provide any guarantees for debt incurred by the board? If so, under what terms?
- **Termination**: What happens to the facility (and to any facilities financing) in the event of termination of the management contract? For a discussion of this issue, see the "Debts" section in the "Compensation and Finances" chapter.

VIII. CONTINGENCY PLANNING FOR NEW MANAGEMENT

Even a carefully constructed partnership may go off track for any number of reasons, some unforeseeable and unavoidable. Terminating a contract – particularly one involving educational programming and management – before its planned expiration is a drastic measure and most likely the last resort for any school that decides to take this step. In some cases, it may be the contractor who decides to terminate a relationship that no longer seems effective or productive.

Where educational programming and staffing are involved, terminating a partnership and transitioning to new management can be enormously disruptive and destabilizing to a school community if not managed well. The potential costs – human, educational and financial – of terminating a contract are so high that most schools and providers consider this option a worst-case scenario, to be contemplated only where a school (or the school's charter) is seriously jeopardized by an unproductive relationship *and* all other reasonable efforts to right the boat are ineffective.

The perspectives and information presented throughout this resource guide are intended, in part, to help schools and their service providers avoid the need to terminate major contracts. Given, however, the reality that terminations do sometimes occur, this chapter provides some ideas and lessons to help smooth a school's transition in such an event (whether the termination is initiated by the school or contractor). The chapters on "Compensation and Finances" and "Property" discuss other issues important to consider in such contingency planning.

Contemplating potential difficulties and addressing them up-front in the service contract can help schools avoid crisis and disaster if a termination does occur.

If a school management partnership can be compared to a marriage, a well-thought-out plan for potential termination and transition to new management is akin to a prenuptial agreement. During the "courtship" or "honeymoon" phase of an educational partnership, no one likes to imagine the possibility of a breakup. But contemplating potential difficulties and addressing them up-front in the service contract can help schools avoid crisis and disaster if a termination does occur. Where termination is imminent, both the school and contractor are better served by the existence of a pre-negotiated, thoughtful termination plan, including arrangements to help the school transition to new management. A pre-developed plan can minimize educational disruption, information disarray, organizational confusion and financial grief if a partnership is terminated and the school needs to move on.

Schools undergoing a contract termination have several options, including:

(1) seeking a new provider that already offers an educational program comparable to the previous one or is willing to implement one;

(2) undertaking continuation and management of the educational program themselves – seeking maximum continuity with the previous program without new contracted assistance; or
(3) instituting a new educational program at the school, either with or without contracted assistance, that differs significantly from the previous one.

The last option listed here would most likely require the approval of the school's charter authorizer. The first and second options may raise serious intellectual property issues if the school, either with or without a new service provider, wishes to continue parts of an educational program that the terminated provider claims it owns. Such issues are discussed in the "Property" and "Contract Duration, Renewal and Termination" chapters of this resource guide.

As soon as a termination appears on the horizon, the school's board must foresee and attend to many tasks to ensure that the transition to new management takes place as smoothly as possible. The board must ensure uninterrupted delivery of expected services to the school's students and families, while keeping staff well-informed of the changes and choices before them (a responsibility that may be shared with the management organization, if practical, depending on who employs the school staff).

***Scenario:** Access to Information Held by a Terminated Provider*

Esperanza Charter Academy's contract with Lighthouse Education Centers is assigned to Skyrocket Learning Systems, which has acquired Lighthouse. Esperanza's board has decided to terminate the contract two years before its expiration because the instructional model offered by Skyrocket, particularly for English language learners – about half of Esperanza's population – is unacceptable to the board. Esperanza has found another education provider, New Millennium Schools, to continue the dual-language immersion approach previously offered by Lighthouse.

Esperanza terminates its contract with Lighthouse at the end of its third school year, and the final installment of the school's annual management fee is paid on time to Skyrocket. (Skyrocket has already acquired Lighthouse but has permitted Lighthouse's programs to continue without modification until the end of the school year to minimize disruption to client schools.) In late May, Esperanza begins working with New Millennium Schools to prepare for the coming fall.

Lighthouse had managed all of Esperanza's student information, from addresses to test results to health information, and the school database has been transferred to Skyrocket. Esperanza's board and its new school managers now need all this information in order to notify the entire school community of the management change and prepare for the fall. However, they have great difficulty obtaining the student records from Skyrocket, which no longer has any staff assigned to matters involving Esperanza and viewed the contract termination as unreasonable in the first place.

Numerous charter schools around the country have undergone terminations of management agreements. Lessons from these experiences that would be useful for other charter school boards facing or contemplating termination include:

- ***Ensuring an orderly transition.*** It is helpful for management agreements to include provisions to ease program transition and minimize disruption to a school's operations in the event of termination. For example, various contracts reviewed for this guide stipulate that, in the absence of unusual and compelling circumstances, a termination shall not become effective until the end of the school year. Some contracts also provide that, in the event of termination: (1) the management organization will, at its own expense, provide reasonable assistance to the charter school for up to 90 days after termination to assist in the transition to another program or education service provider; and (2) if the contract is terminated before the end of the charter term, the charter school shall have the right to continue using the management firm's proprietary curriculum materials, including software and electronically stored data until the end of the charter term, and for no less than one full school year following the year in which termination occurs.

  Charter school boards need to ensure that in the event of a termination, the departing contractor fulfills its obligations for the remaining period of time agreed upon.

  Charter school boards need to ensure that in the event of a termination, the departing contractor fulfills its obligations for the remaining period of time agreed upon (typically till the end of the school year). Some schools do this by maintaining a degree of financial leverage. For example, management agreements may stipulate that in the event of termination, the final payment to the contractor will not be disbursed until all tasks for wrapping up business are completed – student records, transcripts, school database, personnel records, financial records are transferred in good order; final report cards are issued; all necessary information is filed in the school's office; outstanding non-reimbursable bills are paid; all reports and audits due are provided, etc. A provision of this nature in a contract studied for this guide states that in the event of termination, and as a condition for final payment:

  > "[Management Firm] shall provide the following information (including both printed and, where available, machine-readable forms), in good and orderly condition, to [X School] or its designees:
  >
  > - All student records including, without limitation, all materials which pre-date a student's enrollment at [X School] and all records generated for operation of the School while the student has been enrolled at [X School], including student and parent/guardian name, addresses and contact information; attendance records; medical records; special education records, if any; disciplinary records; academic transcripts; standardized test scores; and report cards.
> - Name, address and phone number and grade level for each student enrolled in the School.
> - All free and reduced-price lunch records.
> - All material documents relating to the pension fund and other employee benefits provided to personnel employed at [X School].
> - All material administrative files or records necessary for the operations of the school.
> - Such other materials as are necessary to ensure that the re-enrollment process for the academic year following termination proceeds in an orderly manner.

- Such other materials as [Management Firm] is required to deliver pursuant to applicable law."

Under this type of arrangement, a service provider's final payment could be divided into two installments if so negotiated, but the principle remains the same: regardless of which party is seeking the termination, the charter school board remains responsible for the students' welfare and the school's standing. Thus, it is reasonable – indeed, responsible – for the board to seek to ensure that no departing contractor leaves the school in a lurch. Such an agreement should be valuable to both parties by clarifying the cooperative actions that both the school and contractor must make to terminate their relationship as smoothly as possible.

- ***Re-staffing.*** In cases where school personnel are employed by a departing contractor, a charter school board or its subsequent management organization may want to hire some or even all of the staff to maximize stability and continuity for the school community. To avoid confusion over re-staffing if a termination occurs, it may be useful to reserve this right explicitly in the school's initial management agreement. Anti-competition clauses that would, in the event of termination, restrict the school's right to hire staff who have served the school as employees of the departing company are viewed unfavorably by the IRS in evaluating the school's eligibility for federal tax exemption (discussed earlier in the box on "Federal Tax Exemption and Contracting for Management Services").

Communication with families, staff and other stakeholders as well as the school's authorizer must be strong and timely during a management transition.

- ***Communication with stakeholders and authorizer.*** Communication with families, staff and other stakeholders as well as the school's authorizer must be strong and timely – even more so than usual – during a management transition. This will require that the board have immediate access to the school's database, even if it was previously under the departing management organization's day-to-day control. If the board selects a new service provider to run the school, the board should conduct meetings with families (and if not yet done, school staff) as soon as possible to introduce them to the new provider and discuss the management change and how it may affect them. Likewise, the board should reserve time and attention to address concerns that its authorizer might raise about the management change or progress during the transition.

VIII. CONCLUSION

Carefully drafting contract language on all the issues discussed in these pages can help charter boards and school management organizations enter into mutually beneficial relationships. As most parties to contracts will confirm, however, contracts alone cannot make relationships work. Partnering effectively with a management company requires ongoing communication, troubleshooting, and redefining the terms of the relationship as circumstances evolve and the parties learn from their mistakes.

Partnering effectively with a management company requires ongoing communication, troubleshooting, and redefining the terms of the relationship as circumstances evolve.

In addition, clear contracts cannot eliminate all the possibilities for disagreement. Many contracts outline alternative dispute resolution procedures, such as binding or non-binding arbitration, to avoid litigation if contractual disagreements occur. An attorney experienced in drafting contracts can help interested charter school boards structure such a provision.

When considering all of these contractual issues, it is easy to become preoccupied by all the things that can go wrong in relationships. However, the opportunities for positive collaboration decidedly outnumber and outweigh the potential pitfalls. School management and design organizations bring great strengths and can provide vital assistance for many charter schools. This guide aims above all to help charter boards draw more effectively upon the expertise and resources that educational service providers can offer in creating performance-focused, accountable public schools.

CHECKLIST OF IMPORTANT PROVISIONS TO INCLUDE IN SCHOOL MANAGEMENT AGREEMENTS

Use this checklist to ensure that your management contract specifies or defines:

Foundational Matters

- The authority of the school's charter over the service contract
- The board's responsibility to oversee the service provider's performance under the contract
- Separate documents that detail terms pertinent to the service contract (e.g., an accountability plan, financing agreement, real estate agreement, board policy against conflicts of interest)

Roles & Responsibilities

- The respective roles and responsibilities of the board and the contractor
- The types, levels and intensity of services to be provided by the contractor, laid out as specifically as possible (or refer to separate documents that detail the expected services)
- Both parties' general obligation to adhere to all laws and regulations that apply to the school
- Who will be responsible for specific legal obligations such as:
    - fulfilling reporting requirements
    - following fiscal regulations
    - adhering to special education laws and regulations
    - conducting background checks on employees
    - carrying out payroll and tax accounting
    - making pension contributions
    - meeting health and safety standards
    - fulfilling open meeting requirements for the board
    - ensuring non-discrimination in admissions and employment
    - other requirements that apply to your charter school
- Who will be responsible for activities such as student recruitment, fundraising, and community and media relations
- What reports the board will review prior to their submission to regulators, and on what schedule
- What reports the board will receive after their submission to regulators
- How and under what conditions the board may conduct inspections of school operations
- Who will be responsible for communicating regularly with the charter authorizer and other authorities, parents and the community at large – and how such communications will be shared between the board and the contractor
- Who employs and evaluates the principal, teachers, and other staff

- The role the board and service provider will play in decisions about hiring the principal, teachers, and other staff
- The role the board and service provider will play in evaluating the principal, teachers, and other staff
- The role the board and service provider will play in decisions about dismissing the principal, teachers, and other staff
- The scope of the service provider's authority to subcontract for services, including any restrictions on the size or nature of such subcontracts and any provisions for review of subcontracts by the board or its representatives

(For additional Roles and Responsibilities questions, see the box entitled "Sorting Out Responsibilities Between Boards and Service Providers" in the "Roles and Responsibilities" chapter.)

Contract Duration, Renewal & Termination

- The length of the initial contract term
- The conditions that both the contractor and the school must satisfy for the contract to be renewed
- Procedures for and considerations in determining whether the contract will be renewed
- The grounds on which either the school or service provider may terminate the contract for cause (including provisions for notice to the other party)
- The conditions, if any, under which either party may terminate the contract *without* cause
- Indemnification provisions in the event of default or breach by either party
- What will happen to the school's physical assets, start-up debt, and intellectual property in the event of termination (See checklist items for "Property" below)

Performance Oversight & Evaluation

(Note: Some of the following items need not be included in the management agreement itself if they appear in a referenced document, such as the school's charter contract or accountability plan)

- Clear, measurable school-wide and student achievement results aligned with the school's mission, which the contractor is responsible for achieving.
- How the service provider's achievement (or non-achievement) of such results will affect the board's evaluation of the provider, including renewal and termination decisions
- How often, and in what ways, the board will review and evaluate the contractor's progress toward achieving agreed-upon goals
- The expected frequency and nature of board visits to the school, for official evaluation purposes and otherwise
- The role, if any, that an external evaluator might have in assessing the contractor's performance
- How often, and in what ways (written reports, presentations, etc.), the service provider will be expected to report on the school's educational and operational performance to the board

- The scope of information the contractor's reports should contain
- Conditions, standards, and procedures for board intervention, if the contractor's performance is deemed unsatisfactory

Compensation & Finances

(Note: Some of these issues should be addressed in the school budget or separate financing or real estate agreements rather than the service contract itself. Even so, the contract could still summarize the major terms and should refer to the documents that detail the terms.)

- Which operating and capital expenditures each party will be responsible for
- How the board will fund various costs, including:
  - the board's administrative costs (e.g., meeting expenses and staffing, if applicable)
  - the board's evaluation of the service provider's performance
  - the school's independent audit
  - the board's legal representation
- Precisely what constitutes "revenue" for the purposes of calculating the service provider's compensation or the funds allocated to the service provider for operating the school (e.g., do federal funds count? private donations? receipts from revenue-generating athletic events?)
- The timeline on which the school budget will be developed by the service provider and approved by the board
- The process by which the budget may be amended over the course of the year
- The types of spending decisions that the contractor may make without obtaining board approval and what expenditures of the service provider, if any, must be reviewed by the board or its delegate(s)
- The service provider's compensation, or how it will be calculated
- The schedule on which the service provider will receive compensation
- What will happen in the event that expenses exceed revenue during a given year
- What will happen in the event that revenues exceed expenses in a given year
- What methods will be used to calculate revenues and expenses for the purpose of determining deficits and surpluses
- What reports the service provider must submit to the board on financial performance, and on what schedule
- The fact that the board will select the school's independent auditor
- If the service provider is making any up-front investments for which it might expect repayment:
  - the nature, amount, and timing of such investments
  - the conditions and terms (interest rate, timeframe) under which the board will repay the investments (including how such terms change, if at all, in the event that the service contract is terminated)
- If the service provider is guaranteeing any third-party debt incurred by the board, the terms (if any) under which it will continue to provide the guarantee in the event that the service contract is terminated

Property

(Note: Some of these issues may be addressed in the school budget or separate financing or real estate agreements rather than the service contract itself. Even so, the contract could still summarize the terms and should refer to the documents that detail the terms.)

- The terms under which each party may use the other party's intellectual property while the contract is in force
- The terms (if any) under which each party may continue to use the other party's intellectual property beyond the duration of the contract
- Who owns intellectual property developed in the course of carrying out the contract
- If one party is to own intellectual property developed in the course of the contract, the terms (if any) under which the other party may use such property while under contract and beyond
- The rights of each party to disseminate information about the school's program for marketing, advocacy or general informational purposes
- Any obligation of the parties to disclose information about the school's program to comply with laws and regulations regarding public information
- Who owns physical assets acquired during the course of the contract
- What happens to physical assets acquired in the event that the service contract is terminated
- In the event that physical assets will be leased by the service provider for use at the school, the obligation (if any) of the service provider to ensure that such leases can be assumed by the board in the event the contract is terminated
- Who will order, finance and oversee the acquisition or construction of the school's facility
- Who will order, finance and oversee improvements to the school's facility
- Who will order, finance and oversee maintenance of the school's facility
- Who will be the legal owner or lessor of the school's facility
- If the service provider extends financing for the facility, the terms (e.g., interest rate, payment schedule) under which the board must repay the service provider
- What happens to the facility – and to any facilities financing – in the event of termination of the service contract

Contingency Planning for New Management (in the event of termination)

- The period of time before any termination, absent extraordinary or compelling circumstances, will go into effect (for example, the time remaining until the end of the school year in which termination occurs)
- Whether the school will be able to continue using the departing contractor's proprietary educational materials after termination, and if so, for what length of time and under what terms
- Whether the school or its new management will have the right to hire staff employed by the departing contractor
- How the parties will ensure that the school will have timely access to all information, property, systems and human resources necessary to ensure an orderly transition to new management, such as:

- all student records regarding family/contact information; attendance; discipline; grades and other assessment results; special education; health
- school database and information system
- all free and reduced-price lunch records
- necessary records relating to personnel and employee benefits
- financial and facilities information, vendor subcontracts and all other administrative records necessary for school management and operations
- any other materials necessary to ensure an orderly transition to new management

◆ Any other types of transitional assistance that the departing contractor will be obligated to provide upon termination, and for what period of time

ABOUT THE AUTHORS

This resource guide was researched and written by two consultants – Bryan Hassel and Margaret Lin -- who have a growing reputation for their high-quality contributions to the work of the Charter Friends National Network and to the charter school movement at large.

MARGARET LIN is a consultant who focuses on strengthening charter school accountability and governance. She co-founded and manages the National Charter School Accountability Network, a nationwide collaborative of state-level charter school support organizations working to strengthen accountability planning and practices among charter schools and charter-authorizing agencies.

Based in Washington, DC, Margaret works with charter school assistance organizations, charter-authorizing agencies, charter school boards and founders, and educational foundations in numerous states. She is author of *Measuring Up: How Chicago's Charter Schools Make Their Missions Count* (Leadership for Quality Education, 2001), which helps schools develop valid and reliable measures of learning beyond standardized tests for external accountability planning.

Previously, Margaret co-founded and managed the Charter School Resource Center at Leadership for Quality Education, a school reform organization in Chicago that has provided critical support to the development of charter schools in Chicago and throughout Illinois. Margaret was a Rotary Foundation Scholar in Brussels, Belgium and spent two years teaching all levels of English and cross-cultural courses at public schools, private corporations, and international agencies in Tokyo, Japan. She holds a B.A. from the University of Illinois at Champaign-Urbana and a J.D. from Stanford Law School.

BRYAN HASSEL directs Public Impact, a North Carolina-based education policy and management consulting firm. For the Charter Friends National Network, Bryan has helped develop numerous resources for charter school operators and policy makers on issues such as facilities financing, using comprehensive school designs, and leading and managing staff. He has also co-authored reports on the role of charter school authorizers in granting charters and holding charter schools accountable for results. His book, *The Charter School Challenge*, was published by the Brookings Institution Press in 1999. Bryan holds a Ph.D. in Public Policy from Harvard University. A Rhodes Scholar, he also received an M.Phil. in Politics from Oxford University.

About the growing role of "Charter Friends..."

Charter schools depend on the passion and commitment of their founders and their determination to address the educational needs of the students and communities they serve. But even the best charter founders and operators cannot succeed entirely in isolation. They require an infrastructure of technical and informational support to help design quality schools, obtain charters and launch and successfully sustain their operations.

In response to these needs, a number of state and sub-state charter support organizations are emerging throughout the country. Some of these organizations were initially established to help build public awareness and legislative support for passing a charter school law. Once laws are passed, these groups tend to focus their attention on recruiting and assisting charter applicants and providing charter operators ongoing technical assistance and other forms of support.

These so-called "Charter Friends" organizations assist charters with a variety of issues and needs including school planning, governance, financing curriculum, assessment and accountability, facilities and other critical aspects of starting and running high quality schools. Most are privately funded non-profit organizations, but they sometimes charge fees to help cover the cost of their operations. They attract fiscal and administrative support from foundations, businesses, think tanks, academic institutions and individuals. Some have a membership base of schools in their states. They are most often organized at a state level, but sometimes have a more narrow geographic focus within a state.

About the Charter Friends National Network...

Just as no charter school can succeed in total isolation, state and sub-state "Charter Friends" organizations have found value in the relationships and support they gain from each other. With charter schools now authorized in 37 states and the District of Columbia, both the number of these organizations and the potential for mutual shared support have grown rapidly. In response, the Charter Friends National Network (CFNN) was established in late 1996 as a project of the Minnesota-based Center for Policy Studies in cooperation with Hamline University in St. Paul.

CFNN's mission is to promote the charter opportunity by helping to start and strengthen resource centers and other state-level charter support organizations. CFNN pursues its mission through publications, meetings, on-line communications, a grant program and multi-state initiatives on high priority issues. These initiatives currently include accountability, facilities financing, special education and federal policy development. CFNN also coordinates "National Charter School Week."

Charter Friends National Network began as an expansion of the work of Ted Kolderie, senior associate at the Center for Policy Studies and a leader in the national charter movement from its beginning. Its director is Jon Schroeder, a veteran Minnesota policy analyst and former journalist who played a major role in the design and passage of the federal charter grant program as policy director for former U.S. Senator Dave Durenberger. A third founder was Eric Premack, who heads the Charter Schools Development Center at California State University in Sacramento and is one of the nation's top experts on charter school policy and operations. Several nationally-known consultants are also engaged to work on specific CFNN initiatives.

For more information on CFNN and its activities, contact Charter Friends National Network, 1295 Bandana Boulevard, Suite 165, St. Paul, MN 55108; 651-644-6115 (phone) 651-644-0433 (fax); jon@charterfriends.org (e-mail) or www.charterfriends.org (web site).

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